

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 22-10964-MG

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5 In the Matter of:

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7 CELSIUS NETWORK LLC

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9 Debtors.

10 - - - - - x

11

12 United States Bankruptcy Court

13 One Bowling Green

14 New York, NY 10004

15

16 October 3, 2023

17 09:02 AM

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21 B E F O R E :

22 HON Martin Glenn

23 U.S. BANKRUPTCY JUDGE

24 ECRO: Karen

25

1 HEARING re Doc# 3667 Statement / Notice of Debtors
2 Confirmation Hearing Demonstratives For October 3, 2023
3 (related document(s) 3609, 3577)
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5 Doc# 3668 Statement / Notice of Debtors Confirmation Hearing
6 Witnesses for October 3, 2023 (related document(s) 3609, 3577
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24 Transcribed by: Dani Rossean
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P R O C E E D I N G S

THE COURT: Please be seated. All right. Good morning, everyone. Before we start with the testimony, I wanted to raise one thing with the Debtor, the Committee, the US Trustee. The Consumer Privacy Ombudsman, Lucy Thomson, filed a request to be able to testify remotely for cross-examination. Her -- the document is ECF Document 3589. She attached to it -- there's the letter requesting permission. There is a copy of her purported direct testimony. I'm assuming she's not a lawyer.

What she submitted as her testimony is not under oath. The -- I don't know, the thrust of what her purported -- of her statement was that she's continuing to work with the Debtors and Committee, I guess the US Trustee, in trying to finalize privacy arrangements, primarily with NewCo. Rule 43(A) of the Federal Rules of Civil Procedure is applicable with respect to whether or not someone can appear remotely for testimony. What I would ask is that between the Debtor, the Committee, and the US Trustee, reach out to Ms. Thomson. Her letter request doesn't satisfy the requirements. It just would be -- she's in Washington. It would be inconvenient for her to come. I understand.

What's not clear to me is whether the Debtor or the Committee or the US Trustee intends to cross-examine

1 her. It may well be that there isn't going to be any cross-
2 examination, in which case, her direct -- assuming that
3 she'll need to correct that so that it's under oath -- would
4 come in. But if there's going to be cross-examination, she's
5 going to have to come. I mean, just the inconvenience, I
6 mean, is not sufficient. If you all agree that she's not
7 going to be cross-examined -- I understand a lot of other
8 parties and interests. But if the Debtor, the Committee and
9 the US Trustee agree that she can submit her testimony,
10 direct testimony without cross-examination, I'm not going to
11 require her to come to New York. But she's going to have to
12 fix it and put it under oath. But reach out and see whether
13 -- I don't know. Mr. Koenig, what's the status of efforts to
14 resolve matters with Ms. Thomson?

15 MR. KOENIG: Good morning, Your Honor.

16 THE COURT: Mr. McCarrick's running up here. I
17 don't know whether --

18 MR. KOENIG: Good morning, Your Honor.

19 THE COURT: It's his exercise for the day, but --
20 go ahead. Good morning.

21 MR. KOENIG: Good morning, Your Honor. Chris
22 Koenig, Kirkland & Ellis, for the Debtors. We've been
23 working with Ms. Thomson collaboratively to try to resolve
24 matters, and we have included language in the Proposed
25 Confirmation Order that we proposed with her. We've been

1 working with her. I don't believe she's signed off on it
2 yet. We're also working on a formal privacy policy that
3 would apply to NewCo. So it's all in motion.

4 THE COURT: Okay.

5 MR. KOENIG: I would say well in motion, but it's
6 not quite done yet.

7 THE COURT: So I -- the three parties who I
8 suggested, see whether you can get things resolved.

9 MR. KOENIG: We certainly will.

10 THE COURT: I don't know if there's any particular
11 order in which she needs to testify, but it wasn't clear to
12 me that there would be cross-examination. Hopefully you'll
13 be able to resolve the issue. I mean, she raises serious
14 issues. I'm not questioning that.

15 MR. KOENIG: No, we certainly agree. We've been
16 working with her to try to address her issues and, you know,
17 fulfill, make sure that she can fulfill her mandate. Thank
18 you, Your Honor.

19 THE COURT: Okay. Thank you very much. All right,
20 let's begin with -- is there -- let me ask this, is there
21 anything that you wish to raise before we call the first
22 witness?

23 MR. BROWN: No, Your Honor. Ready to proceed.

24 THE COURT: You have to identify yourself as well.

25 MR. BROWN: Good morning, Your Honor. Judson

1 Brown from Kirkland & Ellis on behalf of the Debtors. We'll
2 begin with Mr. Chris Ferraro this morning.

3 THE COURT: Okay. Come on up, Mr. Ferraro.

4 MR. BROWN: Your Honor, while Mr. Ferraro's
5 getting situated, we have a binder with various exhibits
6 that we might use, including Mr. Ferraro's Declarations. If
7 I might hand those to Mr. Ferraro in Court while he's
8 getting situated.

9 THE COURT: Sure. Please.

10 MR. BROWN: Thank you.

11 THE COURT: Carrie, if you would -- Mr. Ferraro,
12 if you would, raise your right hand.

13 THE CLERK: Do you solemnly swear or affirm all
14 the testimony you're about to give before this Court is the
15 truth and the whole truth?

16 MR. FERRARO: I do.

17 THE COURT: Thank you.

18 MR. BROWN: Your Honor, may I proceed?

19 THE COURT: Please.

20 MR. BROWN: Good morning, Mr. Ferraro. I know
21 you've testified in front of this Court many times, both
22 formally and informally. But can you please introduce
23 yourself for the record?

24 MR. FERRARO: Yeah, good morning, everybody. My
25 name is Christopher Ferraro. I am the acting CEO, Chief

1 Restructuring Officer, and Chief Financial Officer of
2 Celsius. I've been with the company since March of 2022. I
3 originally started as the Head of Planning and Analysis and
4 Investor Relations. I became the CFO the day before the
5 Petition, and I became the CEO, Acting CEO in late
6 September. I come off of a almost two-decade career with JP
7 Morgan where I was a Managing Director, and ran Global
8 Financial Analysis, as well as a Senior Managing Director at
9 Cerberus.

10 MR. BROWN: And can you just briefly describe some
11 of your responsibilities as the Interim CEO and the CRO of
12 the Debtors over the course of the last year plus?

13 MR. FERRARO: Yeah. From the very beginning, I hit
14 the ground running. I think it was very important that we
15 were aligned with the Committee. So, in conversations with
16 the Committee chairs, we were able to kind of find out the
17 trajectory of this case -- where they were, where we were.
18 We started off in, you know, my tenure in October by really
19 kicking the tires. There was a sales marketing process that
20 was just kicking off, that Ryan Kielty will talk about
21 later. But -- and we were also internally looking at a
22 standalone plan. So we were spending a ton of time trying to
23 develop a standalone plan while that process was going.

24 When bids of interest came back, you know, I think
25 we all determined that the best course of action was a

1 sponsor plan, and that led us to the stalking horse,
2 NovaWulf, and then we went into the auction. The auction
3 lasted a long time. I mean, this was on the back of, I
4 think, seven, eight-month sales and marketing process, four
5 weeks. We were able to drive a lot, preserve a lot of value
6 for the creditors. I think we distributed a hundred, we had
7 the ability to distribute hundreds of millions more
8 cryptocurrency, and lower management fees. That all led into
9 kind of naming Fahrenheit. We felt that they had the best
10 plan and the best management team. And then, we went into
11 kind of a plain sponsor agreement, settlements, et cetera,
12 leading up to everything to where we are today.

13 MR. BROWN: We'll get into a little bit more of
14 those details. Just want to take a minute. Over the course
15 of the Debtors' restructuring, you submitted various
16 declarations in support of various requests and motions that
17 the Debtors have put before the Court, correct?

18 MR. FERRARO: Yes.

19 MR. BROWN: I want to take a look at a couple of
20 those this morning. I want to start, in your binder, it's
21 Celsius Exhibit 44. If you can flip to that, please,
22 Mr. Ferraro.

23 MR. FERRARO: I'm there.

24 MR. BROWN: Do you recognize this Declaration,
25 sir?

1 MR. FERRARO: Yes.

2 MR. BROWN: And is this the Declaration that you
3 submitted in support of confirmation?

4 MR. FERRARO: Yes.

5 MR. BROWN: And if you'll flip to the last page,
6 is that your signature, Mr. Ferraro?

7 MR. FERRARO: Yes, it is.

8 MR. BROWN: And is everything in this Declaration
9 true and accurate to the best of your knowledge,
10 Mr. Ferraro?

11 MR. FERRARO: Yes, it is.

12 MR. BROWN: You adopt it as your testimony here
13 today?

14 MR. FERRARO: Yes, I do.

15 MR. BROWN: Your Honor, the Debtors would move
16 Celsius Exhibit 44 into evidence.

17 THE COURT: Any objections? Exhibit 44 is in
18 evidence.

19 (Debtors' Exhibit 44 Received into Evidence)

20 MR. BROWN: Now, Mr. Ferraro, I want to take a
21 look at another Declaration you submitted in this case. It
22 is Celsius Exhibit 34. It is also in your binder. If you'll
23 flip to it and let me know when you're there.

24 MR. FERRARO: I'm there.

25 MR. BROWN: Do you recognize this document, sir?

1 MR. FERRARO: I do.

2 MR. BROWN: What is it?

3 MR. FERRARO: This is the -- my Declaration in
4 Support of a Backup Plan Sponsor.

5 MR. BROWN: And if we flip to the last page there,
6 the last substantive page, is that your signature, sir?

7 MR. FERRARO: Yes, it is.

8 MR. BROWN: And is everything in this Declaration
9 true and accurate to the best of your knowledge?

10 MR. FERRARO: Yes, it is.

11 MR. BROWN: And you adopt that as additional
12 portions of your testimony here today, sir?

13 MR. FERRARO: Yes, I do.

14 MR. BROWN: Your Honor, the Debtors would move
15 Celsius Exhibit 34 into evidence.

16 THE COURT: Any objections? It's admitted into
17 evidence.

18 (Debtors' Exhibit 34 Received into Evidence)

19 MR. BROWN: And lastly, Mr. Ferraro, I want to
20 look at one more Declaration you submitted in this case. It
21 is in your binder. It's Celsius Exhibit 37. If you can flip
22 there for me.

23 MR. FERRARO: I'm there.

24 MR. BROWN: And do you recognize that Declaration?

25 MR. FERRARO: Yes, I do.

1 MR. BROWN: And what is it?

2 MR. FERRARO: This is my Declaration in Support of
3 the Proposed CEL Token Settlement.

4 MR. BROWN: And if you flip to -- do you see at
5 the top there's a written -- it's got page number out of
6 147. You see where I'm at?

7 MR. FERRARO: Yeah, I do.

8 MR. BROWN: If you flip to Page 13 of 147, is that
9 your signature?

10 MR. FERRARO: Yes, it is.

11 MR. BROWN: And are the contents of this
12 Declaration true and accurate to the best of your knowledge?

13 MR. FERRARO: Yes, they are.

14 MR. BROWN: And do you adopt that as additional
15 portions of your direct testimony here today, sir?

16 MR. FERRARO: I do.

17 MR. BROWN: Your Honor, the Debtors would move
18 Celsius Exhibit 37 into evidence.

19 THE COURT: Any objections? All right. It's
20 admitted into evidence as well.

21 (Debtors' Exhibit 37 Received into Evidence)

22 MR. BROWN: Thank you. Now, Mr. Ferraro, you just
23 submitted or admitted a number of declarations. I just want
24 to take a minute and talk about a couple of different
25 aspects of those Declarations, just to highlight them for

1 the Court here. I want to start with confirmation. Can you
2 just describe for the Court briefly the process that you and
3 the Debtors and their advisors undertook to get to the
4 proposed Plan of Confirmation before the Court today?

5 MR. FERRARO: Yeah, I mean, it -- again, it all
6 started many, many, many months ago, as we started to wind -
7 - kind of whittle down our options. That led into the
8 auction. We had three qualified bidders at the auctions, all
9 acting in good faith. Throughout the auction, we were
10 aligned with the creditors. And the goal was always to
11 maximize value and get out of bankruptcy as fast as
12 possible. We continued those discussions across all of those
13 parties -- the sponsor, the backup sponsor, the Debtors, the
14 Committee -- throughout negotiating the contracts. You know,
15 providing additional settlements to move these matters
16 behind us. And that's where we are today.

17 MR. BROWN: And how would you describe the
18 negotiations between the various parties who participated in
19 this process along the many months, as you've described?

20 MR. FERRARO: As a guy who does not like conflict,
21 it was not fun for me. And it went very, very slow, just
22 like the auction. But it was fruitful, so it all worked out
23 in the end.

24 MR. BROWN: Now, the plan, the proposed plan
25 before the Court, includes various releases and exculpations

1 and an injunction. Are you familiar with those provisions of
2 the plan, Mr. Ferraro?

3 MR. FERRARO: Yes, I am.

4 MR. BROWN: Can you just describe them at a high
5 level for the court, what your understanding of them is?

6 MR. FERRARO: Yeah. I mean, these are, again,
7 hard-fought negotiated things which consideration was
8 exchanged. I think the, on the Debtors' piece, Debtors'
9 release, I'd just like to say that, you know, the settlement
10 agreement on the preference actions, I think, brings a lot
11 of closure and comfort to people. That was very important.
12 On the -- also on those release sides, the employees have ,
13 you know, been through a lot in this year, in, you know,
14 three months. I think it's important for the ones that did
15 not commit any bad acts to be released.

16 And then there's consensual third-party releases
17 that were part of the solicitation of ballot process. And
18 then the exculpations is, you know, there's a lot of
19 uncertainty in the regulatory environment. Distributing \$2
20 billion of liquid crypto is not easy and always clear, and I
21 think these -- that's an important protection. And then on
22 the injunction side is the arms and legs to make sure that,
23 you know, releases and exculpation operate and are executed.

24 MR. BROWN: From your perspective, Mr. Ferraro,
25 are these releases -- the Debtor release, the third-party

1 release, the exculpation, the injunction -- are these
2 appropriate and necessary provisions in the plan?

3 MR. FERRARO: Absolutely. A lot of effort,
4 investigations went into this as well. These, like
5 everything in this case, hard fought and highly negotiated.

6 MR. BROWN: I want to talk about another aspect of
7 the plan. You testified a moment ago that you selected
8 Fahrenheit to be the proposed path for emergence for
9 reorganization for the company. Can you just describe, from
10 your perspective, is the Fahrenheit path one that is
11 executable? Is it feasible, in your view, Mr. Ferraro?

12 MR. FERRARO: Yeah. Let me step back and just hit
13 some notes on the Fahrenheit plan, 'cause I think it's
14 important. This is a -- this is a company that has a \$1.25
15 billion balance sheet. I think Stout and Joel Cohen will
16 come up and talk about some of that work that was done that
17 goes into those numbers. This is -- NewCo will be a company
18 that has \$450 of liquid crypto, that it can vest into
19 staking, creating anywhere from 10 to 20 million dollars per
20 year right out of the gate. It has a mining business that is
21 healing and getting better by the day, has 125,000 rigs. No
22 debt. It has an excellent mining manager in the US Bitcoin.
23 I've been truly impressed, and this is one of the reasons
24 why they were selected.

25 And, you know, I think, all in all, at the end of

1 the day, if you look at it, we've been operating in a very
2 difficult time over the last 15 months in mining. We had
3 positive EBITDA, adjusted EBITDA, throughout the entire
4 time. I think it was a low point of 250,000 in December
5 2022. Approximately 50 percent of that 20 million EBITDA
6 over the last 15 months was made in the summer months, the
7 three summer months. So there was a lot of effort that went
8 into that, risk management, hedging, et cetera, and I think
9 we're delivering a great set of assets to the NewCo. And
10 this should be a company that has a great future.

11 MR. BROWN: So I just want to tease that out for a
12 second, Mr. Ferraro. Did you -- were you saying that the
13 mining business itself had generated adjusted EBITDA over
14 the course of restructuring of approximately \$20 million?

15 MR. FERRARO: Yeah, that's correct.

16 MR. BROWN: And did you say that approximately 10
17 million of that alone, approximately half of it, was
18 generated just in the summer months?

19 MR. FERRARO: That's correct.

20 MR. BROWN: And so, what does that suggest to you
21 for the future of the mining business going forward under
22 Fahrenheit's operation?

23 MR. FERRARO: Significant earnings power. No debt.
24 Ability, downside protection. It's important for everybody
25 to understand that in mining, if your marginal costs are

1 higher than your marginal revenue, you curtail. So your
2 downside protection is kind of limited to your OpEx, your,
3 you know, fixed costs and such. So, you know, it's a strong
4 balance sheet with a very, you know, stable business from
5 the standpoint of minimizing losses.

6 MR. BROWN: Now, if the Fahrenheit path is not
7 executable for whatever reason -- regulatory concern,
8 whatever -- what's the Debtors' alternative, Mr. Ferraro?

9 MR. FERRARO: Yeah, so in our plan there is a
10 backup bid, with the backup sponsor being the BRIC. And we -
11 - given all the uncertainties in the regulatory landscape,
12 the volatility of the asset, et cetera, we thought it was
13 incredibly important to have a backup bid. We want to return
14 value to customers as soon as possible. They need the
15 liquidity. And part of the reason to have this backup bid
16 was so that we could tip it and not have to spend months
17 kind of looking for somebody to help us with this. This is a
18 different structure, I think it has a very different
19 regulatory kind of risk to it. So, we thought that this made
20 a lot of sense, given the fact that, you know, bankruptcy's
21 expensive and we want to return value.

22 MR. BROWN: Now, I want to switch gears for a
23 second. We admitted your Declaration concerning the CEL
24 Token. I want to talk about that for just a second. In that
25 Declaration, did you identify a market price for CEL Token

1 as of the pause date?

2 MR. FERRARO: Yes, 12:00 p.m. Eastern on the pause
3 date, .28 cents.

4 MR. BROWN: And just so the record's clear, I
5 think we all know what it is, but can you just describe what
6 a pause date is?

7 MR. FERRARO: June 12th, 2022.

8 MR. BROWN: And what happens?

9 MR. FERRARO: We pause withdrawals, swaps,
10 transfers, et cetera.

11 MR. BROWN: And the market price of the CEL Token
12 at the end of the day on the pause was what, Mr. Ferraro?

13 MR. FERRARO: It was .28 cents.

14 MR. BROWN: Okay. Now, I want to talk about some
15 of the events that led up to that pause. And to do that, I
16 want to look at a couple of exhibits in the binder. I want
17 to start with Exhibit 69. And Your Honor, I want to pause
18 here and note that this exhibit was added to the Debtors'
19 Exhibit List in an Amended Exhibit List filed last night. I
20 do not believe you have a hard copy in your binder, but I
21 have some for you. May I approach?

22 THE COURT: Yes, please. Thank you.

23 MR. BROWN: Mr. Ferraro, are you at Celsius
24 Exhibit 69 in your binder?

25 MR. FERRARO: Yes, I am.

1 MR. BROWN: And this is a pleading filed on the
2 docket in this case, and the caption says 'Notice of
3 Consensual Resolution of Government Investigations.' Do you
4 see that?

5 MR. FERRARO: Yes.

6 MR. BROWN: I want to look at one particular
7 exhibit to this pleading. It's back on Page 6, is where it
8 begins.

9 THE COURT: What page numbers -- are you using the
10 page numbers at the bottom of the page or the page up?

11 MR. BROWN: At the top, Your Honor. And I will
12 clarify that for the record. Mr. Ferraro, you see the ribbon
13 at the top? Let's go to Page 6 of 233.

14 MR. FERRARO: I'm there.

15 MR. BROWN: And do you recognize this document,
16 sir?

17 MR. FERRARO: Yes, I do.

18 MR. BROWN: What is it?

19 MR. FERRARO: This is a Non-Prosecution Agreement
20 between Celsius and the Government.

21 MR. BROWN: And does this Agreement continue from
22 Page 6 over through Page 10 of 233?

23 MR. FERRARO: Yes.

24 MR. BROWN: And on Page 10 of 233, is that your
25 signature, Mr. Ferraro?

1 MR. FERRARO: Yes, it is. Yes.

2 MR. BROWN: Did you sign this Non-Prosecution
3 Agreement on behalf of Celsius?

4 MR. FERRARO: Yes, I did.

5 MR. BROWN: Is this a fair and accurate copy of
6 the Non-Prosecution Agreement that you executed,
7 Mr. Ferraro?

8 MR. FERRARO: To the best of my knowledge, yes, it
9 is.

10 MR. BROWN: Your Honor, the Debtors would move --
11 I really just want to move Pages 6 through 10 of Exhibit 69
12 into evidence. And we can supply the Court with just those
13 limited pages, if you would like. But I want to move those
14 five pages, 6 through 10, into evidence.

15 THE COURT: Any objections? Pages 6 through 10 of
16 the 233-page document, which is ECF 3293, are admitted in
17 evidence.

18 (Debtors' Exhibit 69 Pages 6 Through 10 Received
19 into Evidence)

20 MR. BROWN: Thank you, Your Honor. Now,
21 Mr. Ferraro, let's go back to the first page of this Non-
22 Prosecution Agreement. Can you please just review to
23 yourself the first paragraph of the Agreement, let me know
24 when you're done.

25 MR. FERRARO: Yeah, I've read it.

1 MR. BROWN: And do you see where it talks about a
2 scheme to defraud investors by Celsius?

3 MR. FERRARO: Yes, I do.

4 MR. BROWN: And what does this Non-Prosecution
5 describe as the scheme to defraud investors, sir?

6 MR. FERRARO: In non-legal terms, making false
7 statements, misrepresentations and manipulating CEL Token
8 price.

9 MR. BROWN: Now, I want to look at the last
10 exhibit in your binder. Mr. Ferraro, it is on the tab UCC
11 195. This is a document on the Unsecured Creditor Committee
12 Exhibit List at 195. Do you have that document?

13 MR. FERRARO: Yes, I do.

14 MR. BROWN: Do you recognize it?

15 MR. FERRARO: Yes, I do.

16 MR. BROWN: What is it?

17 MR. FERRARO: This is the Statement of Facts
18 Related to the Non-Prosecution Agreement.

19 MR. BROWN: And just so we're clear, the Non-
20 Prosecution agreement that we just -- the five pages of
21 Exhibit 69 that were just admitted into evidence had, as an
22 attachment, this Statement of Facts?

23 MR. FERRARO: Yes.

24 MR. BROWN: And UCC 195 is the Statement of Facts
25 that was attached to the Non-Prosecution Agreement?

1 MR. FERRARO: Yes, it is.

2 MR. BROWN: And are you familiar with the
3 Statement of Facts, Mr. Ferraro?

4 MR. FERRARO: Yes. Yes, I am.

5 MR. BROWN: Did you review them in conjunction
6 with executing the Non-Prosecution Agreement?

7 MR. FERRARO: Yes, I did.

8 MR. BROWN: Are these a fair and accurate copy of
9 the Statement of Facts attached to the Non-Prosecution
10 Agreement?

11 MR. FERRARO: Yes, yes, they are.

12 MR. BROWN: Your Honor, the Debtors would move UCC
13 Exhibit 195 into evidence.

14 THE COURT: Any objections? All right, UCC 195 is
15 admitted into evidence.

16 (Debtors' Exhibit UCC 195 Received into Evidence)

17 MR. BROWN: Now, Mr. Ferraro, I want to just ask
18 you, you talked about the market price that you identified
19 for CEL, CEL Token, as of the pause date. Are you -- from
20 your perspective at the company, as an executive at Celsius,
21 are you aware of any evidence, anything that would have led
22 the price, the value of CEL, the CEL Token, to increase from
23 the pause date to the petition date?

24 MR. FERRARO: So I'll start by saying I'm not a
25 valuation expert. I worked at a bank for almost 20 years,

1 but I was not in valuation control, but I was around these
2 processes for a long part of my career. My belief is simple.
3 Celsius. in the springtime, was facing a lot of pressures.
4 The crypto industry was facing a lot of pressures. There was
5 a large selloff. Leading up to the pause date, CEL Token had
6 plummeted quite a bit in value up until that point. I think
7 it was .36 cents where it opened. We talked about how it
8 closed at .28. I look at a couple price points during that
9 day.

10 When the Tweet went out about the pause, I think
11 it was around 10:00 at night, the price was .25 cents.
12 Shortly thereafter, the price went down to .15 cents, and
13 then it bounced back to the .28 cents. Between the pause and
14 the petition it went from 28 to 81. This is on the back of a
15 month of nothing but negative news about Celsius and the
16 industry. Bitcoin sold off 25 percent at that time period.
17 It's hard for me understand a token that is represented and
18 marketed as a utility token in which the disclosure
19 statements say that if the platform were to cease to
20 operate, it could become worthless, it's hard for me to
21 believe why it would go up.

22 MR. BROWN: So I might have misheard you,
23 Mr. Ferrao. Did you say between the pause and the petition,
24 CEL Token went from 25 to 81? I might have mis --

25 MR. FERRARO: 28 to 81.

1 MR. BROWN: 28 to 81.

2 MR. FERRARO: Yeah.

3 MR. BROWN: And --

4 THE COURT: But it went from 25 down to -- it went
5 28 to 25, then to 81.

6 MR. FERRARO: Let me, let me start. It opened at
7 36 on the date of the pause. At the point of when it was
8 communicated around 10:00 p.m. that night, it went down to
9 .25 cents. Shortly thereafter, it went as low as 15, and it
10 bounced back up to 28. So it closed the day of the pause at
11 28, and then the price at the petition was 81.

12 MR. BROWN: And you're -- okay. Got the numbers.
13 And from your perspective, was there any economic rationale
14 to support an increase in the value of CEL Token from that
15 pause date to the petition date, the date of the bankruptcy
16 filing?

17 MR. FERRARO: I do not see any reason why the
18 token price would've increased.

19 MR. BROWN: And why is that?

20 MR. FERRARO: It's a utility token on a platform
21 that ceased -- that paused. It says right in the disclosure
22 statement that in that circumstance it could be worthless.

23 MR. BROWN: When you say 'disclosure statement'
24 what are you talking about?

25 MR. FERRARO: These are the general -- sorry, I

1 say 'disclosure statement' -- general terms of use. There is
2 a risk, a risk disclosure around the risks of CEL Token.

3 MR. BROWN: And what is that disclosure,
4 Mr. Ferraro?

5 MR. FERRARO: It effectively says that if the
6 platform were to shut down, that the token could become
7 worthless. It's a utility token.

8 THE COURT: Which version of the terms of use
9 there are you referring? Is this Version 8?

10 MR. FERRARO: This is not the earn terms of use,
11 this is the general.

12 MR. BROWN: Now, Mr. Ferraro, I want to shift
13 gears to one more topic. In the Debtors' Proposed Plan of
14 Reorganization, are you familiar with the employee incentive
15 program?

16 MR. FERRARO: Yes, I am.

17 MR. BROWN: Can you just briefly describe that for
18 the Court?

19 MR. FERRARO: Yeah, this is incentive program to,
20 you know, incent the executives to maximize value and get
21 out of bankruptcy as fast as possible. And it encompasses
22 different things. Some of it is an effective date target,
23 some of it is a distribution target. There's KYC targets,
24 and then there's a bunch of mining operational targets. The
25 goal of this is effectively to get out of bankruptcy as

1 quick as possible. We are burning \$20 million a month on
2 professional costs while in bankruptcy. And on the mining
3 side, it's incredibly important to us that NewCo is a
4 success. And the mining asset is the crown jewel of NewCo.
5 So getting rigs plugged in, getting margins up, general risk
6 management is important for this handoff to maximize value.

7 MR. BROWN: And what is it that you and the other
8 executives remaining at Celsius are going to be doing
9 between now and potential emergence from the company, from
10 bankruptcy if the plan is confirmed?

11 MR. FERRARO: Yeah, it's a Herculean effort. I
12 mean, I'll give you an example. Myself and my team, we've
13 been negotiating two distribution agreements with PayPal and
14 Coinbase, custody agreements. This is, you know, this is --
15 these are not -- these are normally months and months of
16 negotiation that we're trying to pack into a short period of
17 time. You know, the mining business, there's no CEO of
18 mining. I'm the acting CEO of mining. This takes an
19 incredible amount of our time. We meet weekly with the UCC
20 on mining to make sure that his handoff is smooth. So --

21 THE COURT: How many employees remain at Celsius?

22 MR. BROWN: We have currently on payroll just
23 under 150, but we've noticed almost 50 of them. So we expect
24 to be right below 100 at the effective date. And which we'll
25 wind that down after distribution.

1 MR. BROWN: From your perspective, Mr. Ferraro, is
2 the employee incentive program proposed in the plan, is it
3 reasonable and appropriate here, sir?

4 MR. FERRARO: Yes. Quite frankly, I think, you
5 know, some of these targets are probably not going to be
6 achieved. They were a stretch. This was, you know, weeks and
7 weeks of negotiation. I think Alvarez and Marsal and M3
8 negotiated this a bunch and went through the special
9 Committee for approval. This was done months ago. And we,
10 we're trying like hell to hit them all for the benefit of
11 the creditors, but I'm not sure that we will.

12 MR. BROWN: Nothing further at this time, Your
13 Honor.

14 THE COURT: All right. Cross-examination.

15 MR. BROWN: Your Honor, I think the Committee
16 might've wanted to do one thing before we get to cross for
17 housekeeping matters.

18 THE COURT: That's fine. Okay. Mr. Colodny.

19 MR. COLODNY: Yeah, Your Honor, we have a number
20 of exhibits that are documents that were produced to us by
21 Celsius, and Mr. Ferraro as the primary company witness. I
22 was wondering if we could admit those exhibits --

23 THE COURT: If you tell me what they are.

24 MR. COLODNY: I've got them right here. So the
25 Bates-stamped ones are UCC 3 through 15, 27 through 51, only

1 Number 30 is blank, 54 through 56, 88 through 89, 91 through
2 121.

3 THE COURT: Hold on, give me that last?

4 MR. COLODNY: 91 through 121.

5 THE COURT: Okay.

6 MR. COLODNY: And 183.

7 THE COURT: Have you provided copies to other
8 parties?

9 MR. COLODNY: Yes, they're all in our exhibit
10 list. It was filed in the docket and per Your Honor's
11 instruction, we had an FTP site which we made open to
12 everyone in the public. I know there was an issue initially,
13 but we posted [indiscernible]

14 THE COURT: Okay. Are there any objections to the
15 Court admitting in evidence Exhibits 3 through 15, 27
16 through 51, 30 is blank, 54 through 56, 88 through -- and
17 89, 91 through 121 and 183? Hearing no objection, they're
18 admitted into evidence.

19 (Exhibits UCC 3 through 15, 27 through 51, 30 is
20 blank, 54 through 56, 88, 89, 91 through 121, 184 Received
21 into Evidence)

22 MR. COLODNY: And then we have, uh, three other
23 exhibits that are official blog posts and Tweets from the
24 Celsius Network accounts. Those are 177 through 178 and 181.

25 THE COURT: All right. Are there any objections to

1 the Court admitting in evidence Exhibits 177, 178 and 181?
2 They're admitted into evidence.

3 (Exhibits 177, 178 and 181 Received into Evidence)

4 MR. COLODNY: And then, Your Honor, we have a
5 number of exhibits which are YouTube videos, AMA's. And we
6 plan to address how to admit those later today.

7 THE COURT: Okay, all right. Thank you,
8 Mr. Colodny. Mr. Brown.

9 MR. BROWN: Your Honor, just one housekeeping
10 matter, I apologize. I needed to move one more exhibit into
11 evidence that's referenced in Mr. Ferraro's Declaration. I
12 want to --

13 THE COURT: Which Declaration?

14 MR. BROWN: Yeah, so it's Exhibit 44, the
15 Confirmation Declaration, Paragraph 53 of Mr. Ferraro's
16 Declaration. It's on Page 21. References various exhibits to
17 Docket 393. These are the terms of use that the Debtors
18 filed on the docket a year ago. They are on the Debtors'
19 exhibit list at Exhibit 38. Exhibit 38 is one compilation,
20 all of those exhibits that were filed on the docket at 393.
21 The Debtors would move Exhibit 38 into evidence.

22 THE COURT: You started by referring to Exhibit
23 44.

24 MR. BROWN: Yes, I did.

25 THE COURT: So I'm confused.

1 MR. BROWN: Yeah, my apologies. Exhibit 44 is
2 Mr. Ferraro's Confirmation Declaration.

3 THE COURT: Okay.

4 MR. BROWN: That's into evidence.

5 THE COURT: Yes.

6 MR. BROWN: And Paragraph 53 in Exhibit 44
7 references all of these terms of use which are on the
8 Debtors' exhibit list at Exhibit 38.

9 THE COURT: Okay.

10 MR. BROWN: My apologies.

11 THE COURT: Any objections? They're into evidence.

12 (Debtors' Exhibit 44, Paragraph 53 at Exhibit 38
13 Received into Evidence)

14 MR. BROWN: Thank you, Your Honor.

15 THE COURT: Let me just say, I will try to keep my
16 own accurate list of what's in evidence. But I think when
17 the evidence concludes, parties should confer and seek to
18 provide me with a combined list of all exhibits that have
19 been admitted in evidence. And if there are any
20 disagreements about it, we'll sort it out then.

21 MR. BROWN: Absolutely. Happy to do that, Your
22 Honor.

23 THE COURT: Okay. Thank you very much, Mr. Brown.

24 Ms. Cornell, are you going to [indiscernible]
25 examine? While you're going up, I've just got to step out

1 and look for some notes on my desk. But nobody get up when I
2 come back in. So you can get ready to examine as soon as I
3 get back. All right, Ms. Cornell.

4 MS. CORNELL: My name is Shara Cornell with the
5 Office of the United States Trustee. I will try my best not
6 to [indiscernible] lower.

7 THE COURT: All right.

8 MS. CORNELL: I'll do my best --

9 THE COURT: Shara will keep everybody on the
10 straight and narrow path. Including, including --

11 MS. CORNELL: She will. I'm a little shorter than
12 everybody else. So I'll try not to repeat what's already
13 been put into testimony today. But I may have to ask a
14 couple of questions again. So, Mr. Ferraro, are you familiar
15 with the plan as filed?

16 MR. FERRARO: Yes.

17 MS. CORNELL: Did you sign the plan as filed?

18 MR. FERRARO: Yes.

19 THE COURT: You have to keep your voice up as
20 well.

21 MR. FERRARO: I'm sorry. Yes.

22 MS. CORNELL: Are you familiar with the releases
23 and exculpation provisions found in the plan and the plan
24 supplement?

25 MR. FERRARO: Yes, I am.

1 MS. CORNELL: And to all of the amended and
2 supplemental versions of those plans and plan supplements?

3 MR. FERRARO: To the best of my knowledge.

4 MS. CORNELL: And are there a lot of them?

5 MR. FERRARO: Yeah.

6 MS. CORNELL: Are you familiar -- and I think you
7 are -- with the declaration filed at Docket Number 3581 on
8 September 27th, 2023? It's Debtors' Exhibit 44 that we've
9 just been discussing.

10 MR. FERRARO: Yes.

11 MS. CORNELL: Do you have a copy of that in front
12 of you?

13 MR. FERRARO: I do.

14 MS. CORNELL: And just for the record, I know we
15 already spoke about this, but did you sign this Declaration
16 that's found at ECF Docket Number 3581?

17 MR. FERRARO: Yes, I did.

18 MS. CORNELL: Did you prepare this Declaration?

19 MR. FERRARO: It was drafted by the legal
20 advisors. I reviewed it and we iterated on it until it got
21 to this point.

22 MS. CORNELL: Okay. What I'm going to do now is
23 I'm going to ask you questions as they relate to specific
24 provisions in the Declaration, if that's all right. So if
25 I'm moving too fast or you need time to re-read, just put

1 your hand up, but also say hold on a minute.

2 MR. FERRARO: Okay.

3 MS. CORNELL: So, I first want to direct you to
4 Paragraph 8.

5 MR. FERRARO: Yes.

6 MS. CORNELL: So in Paragraph 8, you state that
7 you had personal involvement in plan negotiations and
8 drafting process. Can you please confirm if that is
9 accurate?

10 MR. FERRARO: Yes, that is accurate.

11 MS. CORNELL: In Paragraph 12 you state that you
12 had close involvement with marketing and sales process and
13 negotiations. Can you please confirm that this is accurate?

14 MR. FERRARO: yes, that's correct.

15 MS. CORNELL: You also state that you had
16 firsthand knowledge of the importance of such releases and
17 exculpation. Can you confirm that -- if that's accurate?

18 MR. FERRARO: Yeah, that's correct.

19 MS. CORNELL: Okay. In Paragraph 13 you state, or
20 your Declaration states, that in consideration for the
21 Debtor releases, that the Debtors and their estates will
22 provide mutual releases for a few -- for certain releasing
23 parties. Is this true?

24 MR. FERRARO: Yes.

25 MS. CORNELL: I'm not going to go through them

1 all, but I'd like to go through a few of the releasing
2 parties if possible to discuss what type of consideration
3 they provide to the Debtors' estates. Are you familiar with
4 that information?

5 MR. FERRARO: I'll do my best, yes.

6 MS. CORNELL: The first party I'd like to discuss
7 is the BRIC. And I don't think we discussed them at length
8 on the record today. So just for the record, would you mind
9 explaining who the BRIC is and what that means in relation
10 to the plan?

11 MR. FERRARO: Yeah, the BRIC is our backup plan
12 sponsor. Their plan is a slightly different structure. It
13 has a higher kind of initial liquid crypto distribution.
14 Equity in a mining company. The illiquids stay back and are
15 not part of the NewCo. So one of the differences in this
16 plan is the illiquid assets are not converted to liquid
17 equity, if that makes sense, and the overall recovery rates
18 are slightly lower than the NewCo plan, which we think is
19 the value maximizing.

20 MS. CORNELL: Okay. And what about the BRIC as an
21 entity? Could you explain who makes up the BRIC consortium,
22 please?

23 MR. FERRARO: Yeah, the BRIC is made up -- and
24 I'll probably, I'll probably miss a few -- but it's made up
25 of GXD, which is a company that is involved in the digital

1 assets base in mining. It's made up of VanEck, which is a,
2 you know, a long-term player and investment space, et
3 cetera. It was -- we had Gemini as the distribution agent,
4 if I remember correctly. Yeah, that's kind of the
5 highlights.

6 MS. CORNELL: Now, to the best of your knowledge,
7 what consideration has the BRIC consortium provided to the
8 Debtors and the Debtors' estates to receive releases in this
9 case?

10 MR. FERRARO: So I look at what the BRIC
11 contributed as much more than the transactions, the backup
12 bid. They were there through the auction. They were there
13 and drove, like we said, preserved an immense amount of
14 value. I meet with the BRIC weekly, with the special
15 Committee, to make sure that they're up to speed on any sort
16 of pivot. They were critical to the success of this plan and
17 played a unique role as a backup sponsor.

18 MS. CORNELL: Are you familiar with the breakup
19 fee and expense reimbursement that this Court previously
20 authorized for the BRIC?

21 MR. FERRARO: Yes.

22 MS. CORNELL: How do you view those breakup fees
23 and expense reimbursements as they relate to consideration
24 in this case? You just discussed that they've been helpful
25 to the Debtors and that they've assisted throughout, and

1 that they're still, I don't want to say on standby, but
2 they're available. And it's my understanding that the
3 expense reimbursement and breakup fee were related to what
4 you just discussed. Could you explain a little bit more
5 about what additional consideration is to be provided?

6 MR. FERRARO: Yeah. I think the breakup fee, the
7 expense reimbursement, that's related to the transaction.
8 BRIC's been here for almost a year through the sales and
9 marketing process early on, you know, driving, driving value
10 for the estate. So I think they've provided a lot more than
11 just the transaction, which was the reason for the breakup
12 fee and the expense reimbursement.

13 MS. CORNELL: Okay. I'm going to move on now to
14 PayPal. Are you familiar with PayPal's role in this case?

15 MR. FERRARO: Yeah, I am. We've been working with
16 them quite a bit in long negotiations, yeah.

17 MS. CORNELL: Could you explain for the record
18 what PayPal's role is in this case?

19 MR. FERRARO: They'll be a distribution agent. So
20 they'll provide distribution of BTC and ETH to the creditors
21 within the United States. And they also have backup fiat
22 capabilities for those that cannot get either distributed
23 from Coinbase or from PayPal, we use PayPal fiat.

24 MS. CORNELL: Are you familiar with the timing
25 that PayPal would be involved in this case?

1 MR. FERRARO: Yeah, it's up to 5 years.

2 MS. CORNELL: Let me rephrase that, I'm sorry.

3 When do you believe that PayPal would begin their role in
4 this case as a distribution agent?

5 MR. FERRARO: Well, the actual distribution will
6 not occur until the effective date. But PayPal, I mean,
7 there is tons of kind of work that's going on right now,
8 technical work between the IT teams, the technology teams,
9 the security teams, the operational teams, to make sure that
10 this handoff is smooth with, you know, really, the security
11 of the customers' coins at the center of everything we do.

12 MS. CORNELL: So would it be fair to say that your
13 testimony today is that PayPal, right now, is working on the
14 contractual relationship with the Debtors prior to
15 confirmation or the effective date?

16 MR. FERRARO: Contractual and operations.

17 MS. CORNELL: Okay, thank you. To the best of your
18 knowledge, what consideration, valuable consideration, do
19 you believe that PayPal is providing to the Debtors' estate
20 in exchange for its releases?

21 MR. FERRARO: They're returning a lot of
22 cryptocurrency to creditors who need it.

23 MS. CORNELL: Is PayPal receiving a fee for that
24 role?

25 MR. FERRARO: No, they're actually paying the

1 estate.

2 MS. CORNELL: I'm going to move on to the plan
3 administrator. Are you familiar with the plan administrator
4 in this case?

5 MR. FERRARO: Yes.

6 MS. CORNELL: Or the plan administrator's role?

7 MR. FERRARO: Yes, I am.

8 MS. CORNELL: To the best of your knowledge, what
9 valuable consideration do you believe the plan administrator
10 is providing to the estate in exchange for releases?

11 MR. FERRARO: Overseeing the distribution is a --
12 again, it ties back to the distribution agents. We're
13 returning \$2 billion of crypto. So that's kind of job one
14 and two for the plan administrator right out of the gates.

15 MS. CORNELL: Is the plan administrator going to
16 be compensated for its role?

17 MR. FERRARO: Is the plan administrator -- yes,
18 yes.

19 MS. CORNELL: Okay. I'm going to move on to
20 Paragraph 15 of your Declaration.

21 MR. FERRARO: Okay.

22 THE COURT: Let me ask a question. What does the -
23 - what's the scope of the release that they're getting? What
24 is it that's released, what's not released?

25 MR. FERRARO: Specifically for PayPal?

1 THE COURT: Well, we went through BRIC, PayPal and
2 plan administrator. You can go through them one at a time,
3 but what conduct is not being protected by the -- what
4 potential conduct is not being protected by the releases
5 that they're receiving? For example, is there a gross, you
6 know, misconduct, fraud --

7 MR. FERRARO: Oh, yes. Yeah, yeah.

8 THE COURT: -- what's the scope -- what's the
9 limitations on the release that each -- that BRIC, PayPal
10 and the plan administrator would be receiving if the plan's
11 approved?

12 MR. FERRARO: Okay, perfect. Sorry, I'm not, I'm
13 not a lawyer and this is my first time, so some of this
14 stuff is a learning curve for me. There's a carveout for, of
15 course, negligence, fraud, willful misconduct, yes.

16 THE COURT: Go ahead.

17 MS. CORNELL: Absolutely. So I'm going to turn to
18 Paragraph 15. And with respect to Paragraph 15 of your
19 Declaration, I want to turn specifically to the ad hoc
20 Committees. Are you familiar with the ad hoc Committees in
21 this case?

22 MR. FERRARO: Yes, I am.

23 MS. CORNELL: Various ad hoc Committees.

24 MR. FERRARO: Yes, I am.

25 MS. CORNELL: Again, I don't want to belabor

1 things or go through all of the different Committees and
2 what have you. But let's just -- we'll focus on one, just as
3 an example. We'll talk about Earn Ad Hoc, just because
4 they're a larger group. To the best of your knowledge, what
5 consideration has the Earn Ad Hoc group provided in exchange
6 for releases?

7 MR. FERRARO: I mean, the contributions of the ad
8 hoc groups to where we are today cannot be understated by
9 any, any means whatsoever. They support the plan, that was
10 an important element of the consideration. I mean, they've
11 been here along the way. We would not be here without the ad
12 hoc groups, all of them.

13 MS. CORNELL: To the best of your knowledge, have
14 you or the Debtors agreed to not object to any substantial
15 contribution claims made by any ad hoc groups as part of
16 those settlements?

17 MR. FERRARO: I do not know.

18 MS. CORNELL: Okay. Do you know who would know
19 that information?

20 MR. FERRARO: I would probably have to turn over
21 to my legal advisors.

22 MS. CORNELL: Okay. Thank you. To the best of your
23 knowledge, are you providing these releases in exchange for
24 support of the plan?

25 MR. FERRARO: It's a consideration to support the

1 plan. I don't think it's the only consideration.

2 MS. CORNELL: Okay. In the last sentence of
3 Paragraph 15, you state that without these releases -- and
4 I'm paraphrasing, I'm sorry -- without these releases, it
5 would threaten the ability to make in-kind distributions.
6 Can you please elaborate?

7 MR. FERRARO: Yeah, ma'am. The simplest way to
8 think about it is, if we didn't kind of come to settlements
9 with the various groups, we'd be litigating a lot of these
10 items. We would still be litigating these items. And that
11 would obviously slow down, not only slow down the return of
12 liquid crypto, but it would decrease the amount that we have
13 available. We continue to burn 20 million a month.

14 MS. CORNELL: I'm going to go back to Paragraph
15 17, if you don't mind. And again, I apologize if I'm
16 repeating earlier things, but they're -- try to go in the
17 order of the Declaration to make it as easy as possible. In
18 Paragraph 17, the Declaration states that you know full well
19 the contributions that the Debtors will need the release
20 parties to continue to make. Do you think you could help us
21 unpack that sentence? Again, it says that you know full well
22 the contributions that the Debtors will need the release
23 parties to continue to make.

24 MR. FERRARO: Think of the employees getting this
25 distribution done. Think -- we talked about PayPal,

1 Coinbase. These are Herculean efforts to do this.

2 MS. CORNELL: What about the ad hoc groups, what
3 kind of contributions will they continue to make?

4 MR. FERRARO: I mean, the ad hoc groups continue
5 to support the plan. The ad hoc groups, you know, we got to
6 the settlements. And, you know, there's Board observers, et
7 cetera. So --

8 MS. CORNELL: Okay. I'm going to move on to
9 Paragraph 20. Paragraph 20 states that third-party releases
10 are wholly consensual. Can you explain for the record what
11 that means to you?

12 MR. FERRARO: It means that in the ballots, you
13 can opt out of the releases.

14 MS. CORNELL: So --

15 MR. FERRARO: So people had a vote.

16 MS. CORNELL: So it's your opinion, based on the
17 balloting and the receipt of those ballots, that the third-
18 party releases were wholly consensual.

19 MR. FERRARO: Yes.

20 MS. CORNELL: I'm going to move on to Paragraph
21 21, please. Are you familiar with the voting process and
22 tabulation?

23 MR. FERRARO: Somewhat. Not, not intimately, but
24 somewhat.

25 MS. CORNELL: And if you don't know the answer to

1 my question, that's acceptable. But do you know the number
2 of opt-out forms that were received by the Debtors?

3 MR. FERRARO: I do not.

4 MS. CORNELL: Okay. Who would be the best person
5 to ask that information?

6 MR. FERRARO: I would probably ask the legal
7 advisors, who are very close to this.

8 MS. CORNELL: I'm going to go to Paragraph 22,
9 please. And again, in Paragraph 22, you discuss the release
10 parties' substantial contributions. I'd like to go through
11 some of the post-effective date entities here. Are you
12 familiar with what I mean when I say post-effective date
13 entities?

14 MR. FERRARO: I think so, yes.

15 MS. CORNELL: Okay. I won't -- again, I won't go
16 through them all, but just, just a few. The first one I'd
17 like to go through is the plan administrator. I know we
18 spoke about that role a little bit earlier. But would you
19 agree that the plan administrator is not currently in
20 existence?

21 MR. FERRARO: Yeah.

22 MS. CORNELL: To the best of your knowledge, when
23 will the plan administrator role come into existence?

24 MR. FERRARO: At the effective date.

25 MS. CORNELL: The effective date. Okay. What about

1 NewCo, is NewCo currently in existence?

2 MR. FERRARO: There might be entities related to
3 NewCo that have been opened, but the assets have not vested.
4 So I wouldn't say that it exists at the moment.

5 MS. CORNELL: So would it be your testimony that
6 NewCo will not exist until post-confirmation, post-effective
7 date?

8 MR. FERRARO: In a meaningful way, yes.

9 MS. CORNELL: Okay. And without going through all
10 the parties, would it be your understanding that there are
11 some parties listed in the release and exculpation
12 provisions that will not be in existence? And I know that's
13 a weird turn of phrase, but be in existence until after the
14 plan is confirmed and the plan goes effective?

15 MR. FERRARO: Yeah, I think we went through the
16 two good examples of that.

17 THE COURT: I'm sorry, I didn't hear the last
18 part.

19 MR. FERRARO: I'm sorry, I think we went through
20 two good examples of that, yeah.

21 MS. CORNELL: Thank you. So now I'm going to move
22 onto some of the exculpation provisions in the plan and in
23 your Declaration. The first one is Paragraph 26. You state
24 your belief that these provisions are appropriate. Can you
25 please confirm that for the record, that you believe that?

1 MR. FERRARO: Yeah, I, I do, and I can confirm
2 that this is a situation in which this industry does not
3 have a clear regulatory kind of understanding. And, you
4 know, distributing crypto is, is -- doesn't come without
5 risk.

6 MS. CORNELL: Sure. In Paragraph 27, you state
7 that these exculpation provisions are critical to ensure
8 that funds can be returned to creditors. Is that your
9 belief?

10 MR. FERRARO: Yeah, absolutely.

11 MS. CORNELL: Can you explain just a little bit
12 for the record how these exculpation provisions will impact
13 distributions in this case, and the return of funds to
14 creditors?

15 MR. FERRARO: Well I think it's a key component of
16 the distribution partners getting comfortable with the
17 situation.

18 MS. CORNELL: Okay.

19 THE COURT: Is there a list that specifically
20 names who will receive releases or exculpation?

21 MR. FERRARO: Exculpations, releases are --
22 there's a black list of people who are excluded.

23 THE COURT: I understand -- that part I
24 understand. But is there a list identifying the parties who
25 will receive releases or exculpation?

1 MR. FERRARO: To my knowledge, we have not gone
2 back and included every single person that was -- and
3 created a list, that was ever an employee, that's not on the
4 excluded list and things like that. So I'm not sure that
5 there's a master list.

6 THE COURT: How is a court supposed to know who is
7 receiving a release or exculpation? I can look at a list of
8 excluded parties, but you've acknowledged there's no list of
9 who's receiving releases or exculpations. How -- whether
10 it's this Court or a non-bankruptcy court or some other
11 court, how -- if issue arises, if someone sues someone who
12 is involved, how is a court supposed to know whether they
13 received a release or exculpation?

14 MR. FERRARO: I'll do my best. Again, not a
15 lawyer, first time. I think it's pretty clear who's
16 excluded, and I --

17 THE COURT: I think I understand who's excluded.

18 MR. FERRARO: Okay.

19 MS. CORNELL: Mm-hmm.

20 THE COURT: My question is, who is included.

21 MR. FERRARO: I think the way it's written, it's
22 everybody who's not excluded.

23 THE COURT: Is that everybody in the universe?

24 THE COURT: Well, it's, it's labeled -- sorry,
25 it's qualified employee, you know, Debtors, employees,

1 special Committee, et cetera.

2 MS. CORNELL: And I think the release parties also
3 are included.

4 MR. FERRARO: Yeah, it's the [indiscernible]
5 release parties, I apologize for --

6 THE COURT: Right. That, just for the benefit of
7 the Committee and the Debtors, that is something that's
8 bothering me, is I think I know who the excluded parties
9 are. They're identified. It's that who's receiving a release
10 or exculpation is not. I understand Ms. Cornell has made the
11 point that the plan administrator is not selected yet, but
12 that will be easily identified. Go ahead.

13 MS. CORNELL: Thank you, Your Honor. So we just
14 spoke about it's your belief in the Declaration that these
15 exculpation provisions are critical to insuring funds are
16 distributed to creditors. Are you aware of the Voyager
17 bankruptcy case and the Voyager bankruptcy plan? Generally
18 speaking.

19 MR. FERRARO: Generally. Not in any details. I've
20 been focused on this one.

21 MS. CORNELL: Absolutely. So, as of right now, the
22 plan, as I understand, in Voyager, was confirmed. But the
23 exculpation provision was held in abeyance. What is your
24 opinion about how those exculpation provisions in this case
25 are required for distribution? Or are those some -- are

1 those something that can be seen as a separate issue?

2 THE COURT: I'm going to object, stating the
3 objection.

4 MS. CORNELL: Sure.

5 THE COURT: I mean, if you've got -- I don't think
6 it's proper to ask him about what's in the Voyager --

7 MS. CORNELL: Sorry.

8 THE COURT: -- plan or exculpations, or in Judge
9 Wiles' opinions when he addressed the issues.

10 MS. CORNELL: Right.

11 THE COURT: He obviously was very troubled.

12 MS. CORNELL: Yes.

13 THE COURT: By some of the objections to
14 exculpation and releases. So I'm ruling that out.

15 MS. CORNELL: Understood, Your Honor. So moving on
16 to Paragraph 28. And I'd like to specifically discuss the
17 BRIC as they relate to the exculpation provisions. Are you
18 aware that the BRIC were given an option to be retained by
19 the estate in these cases, but declined?

20 MR. FERRARO: Referencing the consulting
21 arrangement?

22 MS. CORNELL: Yes. Exactly. I'm sorry, yes.

23 MR. FERRARO: Yes.

24 MS. CORNELL: With respect to their consulting,
25 that they had originally desired.

1 MR. FERRARO: Yeah, the 500,000 a month, yes.

2 MS. CORNELL: Mm-hmm.

3 MR. FERRARO: I am.

4 MS. CORNELL: Why should the BRIC receive the same
5 type of benefits that retained professionals receive, when
6 they made a choice not to be retained by the estate?

7 THE COURT: I don't think that's a fair question.
8 When the issue about their retention arose, it was a
9 question of whether provisions of the code regarding
10 retention arose. We had a whole colloquy about it. I
11 supported the position of the US Trustee that they could not
12 be retained at that point, and it didn't get pressed. So I
13 think the question is an unfair question because it really
14 excludes what the whole background and colloquy about
15 whether or not they're retained. Here they are, the backup
16 bidder, and the issue of whether they're -- whether they
17 should also be provided with releases or exculpations is
18 very much an issue.

19 MS. CORNELL: Mm-hmm.

20 THE COURT: But I don't think it's fair to ask
21 about what your -- the basis for your objection or my
22 agreement with it.

23 MS. CORNELL: Mm-hmm. Okay. That's fair. Moving on
24 to Paragraph 28, and this deals with PayPal and Coinbase.
25 Would you agree that both PayPal and Coinbase have and will

1 be included in very discreet acts with respect to this case?

2 MR. FERRARO: The main purpose will be to return
3 crypto and value to customers, yes.

4 MS. CORNELL: For the record, could you explain a
5 little bit about each Coinbase and PayPal's specific acts
6 within this bankruptcy case, and what their -- what the
7 Debtors' expectations are for them?

8 MR. FERRARO: Yeah. We'll start with PayPal. Think
9 of PayPal predominantly as the distribution agent. They'll
10 return BTC and ETH to US customers. We also will use Paxos
11 as a custodian. It's not PayPal specifically, but Paxos as a
12 custodian for the amounts that we're going to distribute
13 vis-à-vis PayPal.

14 MS. CORNELL: Mm-hmm.

15 MR. FERRARO: And then Coinbase is doing the
16 distribution and they're also the custodian for the assets
17 that are related to international distribution. So it is
18 narrow distribution agent and custodian.

19 MS. CORNELL: So with that in mind, with these
20 narrow roles in mind, why, in your belief, should they
21 receive the same type of broad exculpations as, say,
22 Kirkland & Ellis?

23 MR. FERRARO: I mean, simply stated, there's no
24 knowledge of any issues with either of these. They're a key
25 partner in the distribution, and we feel that, you know,

1 this is something that helps get us to that point.

2 MS. CORNELL: But you do agree that their role is
3 limited to distribution and not the entirety of the
4 bankruptcy case.

5 MR. FERRARO: Yeah, distribution and for Coinbase
6 as well, custody, yes.

7 MS. CORNELL: Okay. Is it your understanding that
8 no post-effective date entity will be exculpated?

9 MR. FERRARO: Yeah, I mean, I think the
10 exculpations are all for -- yeah.

11 MS. CORNELL: And I bring that up because there
12 was a temporal scope added to the exculpation provision. Are
13 you familiar with that?

14 MR. FERRARO: No, I don't -- I'm not sure that I -
15 - I don't want to get into that [indiscernible]

16 MS. CORNELL: That's okay.

17 THE COURT: That's something that was negotiated
18 between your office and the Debtors and the Committee, and
19 it was added to narrow the scope of release or exculpation.

20 MS. CORNELL: During a specific time period pre-
21 effective date. Just as -- by way of background.

22 THE COURT: Yeah. I'm not sure, what's the -- why
23 is that a proper question here?

24 MS. CORNELL: Well, I was --

25 THE COURT: They negotiated -- you raised an

1 objection to --

2 MS. CORNELL: I just wanted to know if he had --
3 if he knew -- I just wanted to know if he was familiar with
4 it.

5 THE COURT: Let me -- you raised an objection to
6 scope of releases and exculpation. You still have some
7 objections.

8 MS. CORNELL: Mm-hmm.

9 THE COURT: But you negotiated modifications to
10 the language to have a temporal limitation. But that was
11 between the lawyers. I mean --

12 MS. CORNELL: I just wanted to know if he was
13 familiar with it. The limitation that was provided.

14 THE COURT: Next question.

15 MS. CORNELL: Okay.

16 MR. FERRARO: I know that we went -- I'm sorry.

17 THE COURT: Go ahead.

18 MS. CORNELL: With respect to the plan
19 administrator, are you familiar with the Plan Administration
20 Agreement?

21 MR. FERRARO: I've been through the agreement,
22 I've read through it a few times, yes.

23 MS. CORNELL: I don't believe it's listed on one
24 of the Debtors' exhibits. So if Your Honor would allow us to
25 approach to provide an excerpt from the Plan Administration

1 Agreement. It was in a plan supplement.

2 THE COURT: If there's no objection, go ahead.

3 We'll see if we have any objections.

4 MS. CORNELL: [indiscernible] do you have a copy?

5 MR. COLODNY: Your Honor, can she admit the whole
6 exhibit, just so we have everything?

7 THE COURT: Ask your questions, agree with the
8 Debtors and the Committee, you can introduce the exhibit. It
9 doesn't have to be right now. You can go ahead with your
10 question.

11 MS. CORNELL: Yes, that's fine, I, yeah.

12 THE COURT: Go ahead.

13 MS. CORNELL: Absolutely fine. The Plan
14 Administrator Agreement provides for different standards for
15 exculpation than the plan itself and the confirmation order.
16 Are you familiar with those distinctions?

17 MR. FERRARO: I believe so.

18 MS. CORNELL: Would you mind explaining for the
19 record why there's a difference in the exculpation provided
20 in the plan and in the Plan Administrator Agreement?

21 MR. FERRARO: Yeah, I think the Plan Administrator
22 Agreement, the exculpation is more like a -- and I'm sort of
23 venturing outside my comfort zone here. But it's sort of
24 more of a contract type of situation, not a bankruptcy
25 situation. This is like a limitation of liability clause, to

1 my understanding. So effectively, you know, it shields the
2 plan administrator unless it's negligent, willful
3 misconduct, bad acts, et cetera. That's my understanding.

4 MS. CORNELL: I think that's all that I have for
5 now, Your Honor. Thank you.

6 THE COURT: Thank you very much. Anybody else wish
7 to cross-examine?

8 MR. KIRSANOV: I do, Your Honor. Dmitry Kirsanov.

9 THE COURT: All right. Go ahead.

10 MR. KIRSANOV: Good morning, Mr. Ferraro. You
11 mentioned your gross maximized value to [indiscernible] so
12 let's talk about the CEL Token matter. Were you aware that
13 about 750,000 of my CEL Tokens in custody were unable to be
14 moved months ahead of the freeze of bankruptcy?

15 MR. FERRARO: I'm not aware of that specific
16 situation.

17 MR. KIRSANOV: Did Celsius have enough CEL Token
18 to move my funds?

19 MR. FERRARO: Celsius has enough CEL Tokens to
20 satisfy any obligations.

21 MR. KIRSANOV: Did Celsius have enough CEL Tokens
22 to move my funds when I had requested them to be moved?

23 MR. FERRARO: I can't speak to your specific
24 situation, but we had ample amount of CEL Token.

25 MR. KIRSANOV: Are you familiar with the Blunsine

1 [ph] Declaration?

2 MR. FERRARO: Generally. It's been a while ago,
3 but yes.

4 MR. KIRSANOV: Were you aware that the custody and
5 withhold liabilities where CEL exceeded the assets available
6 on Fireblocks ahead of the freeze and filing date?

7 MR. FERRARO: Not, not sure I'm following or
8 knowledgeable about those details.

9 THE COURT: You can ask questions, but you can't
10 testify as to facts, whether they're facts or not. But I'll
11 permit you to ask the witness questions. But you're making
12 statements of fact that are not in the record.

13 MR. KIRSANOV: All right, thank you, Your Honor.
14 Did CEL Token have a market value ahead of the asset pause?

15 MR. FERRARO: Yeah, I mean, ahead of the pause it
16 was traded. It was traded on exchanges, traded on Celsius
17 OTC. So there was a market pre-pause, yes.

18 MR. KIRSANOV: Did the CEL Token have a market
19 value ahead of the bankruptcy filing day?

20 MR. FERRARO: Yeah, I think we just talked about
21 that, that there was value at the pause, there was value
22 thinly traded post the pause. Most of the coins were -- it
23 had --

24 THE COURT: We had a price, but what is -- value
25 may be different than the price.

1 MR. FERRARO: Value might be different from price.
2 There's a price that we could see on the screen.

3 MR. KIRSANOV: So the CEL Token did have a market
4 value after bankruptcy as well.

5 MR. COLODNY: Objection, Your Honor. He's
6 [indiscernible] referring to price.

7 THE COURT: Sustained. You can ask whether it had
8 a price, but not a value.

9 MR. KIRSANOV: Did the CEL Token have a price
10 after bankruptcy?

11 MR. FERRARO: Yes, you could see it on, you could
12 see the price on the screen, yes. It had a price.

13 MR. KIRSANOV: Could an individual acquire CEL or
14 transact with CEL Token even today?

15 MR. FERRARO: Yes, there's about 5 percent of the
16 circulating supply that is tradable at this moment.

17 MR. KIRSANOV: Did the price of CEL Token exceed
18 .81 cents after bankruptcy?

19 MR. FERRARO: It might have, for a moment in time.
20 I think it precipitously declined to this point, largely.

21 MR. KIRSANOV: Did it exceed one dollar after
22 bankruptcy?

23 MR. FERRARO: I don't know the specifics, sir. It
24 might have.

25 MR. KIRSANOV: Okay. Were you aware that the

1 majority of CEL Token holders in the custody class voted to
2 reject the CEL Token settlement? [indiscernible]

3 MR. FERRARO: No, I was not aware.

4 MR. KIRSANOV: Accepting the custody settlement
5 transfers the ownership of tokens to the creditor. Is that
6 correct?

7 MR. COLODNY: Objection, Your Honor. Calls for a
8 legal conclusion.

9 THE COURT: Sustained.

10 MR. FERRARO: Can you ask again?

11 THE COURT: No, objection sustained. Ask the next
12 question.

13 MR. FERRARO: Okay.

14 MR. KIRSANOV: If a custody holder has not
15 accepted the custody settlement and rejected the plan, can
16 Debtors retain control of the CEL Token settlement, is that
17 correct?

18 MR. COLODNY: Objection, Your Honor. Calls for a
19 legal conclusion.

20 THE COURT: Sustained.

21 MR. KIRSANOV: Does the CEL Token settlement apply
22 to the CEL Tokens held in the custody class?

23 MR. COLODNY: Objection, Your Honor.

24 THE COURT: Sustained.

25 MR. KIRSANOV: CEL Tokens were not able to be

1 distributed immediately upon the initial custody settlement
2 on disbursement day. Why is this?

3 MR. FERRARO: CEL Tokens were not able to be
4 distributed -- we distributed CEL Tokens to custody holders.

5 MR. KIRSANOV: But they were not able to be
6 distributed immediately on disbursement day. Why was this?

7 MR. FERRARO: I'm not following. We were able to
8 distribute CEL Token back to custody customers.

9 MR. KIRSANOV: You were, but not in the platform
10 immediately open. Why was it unavailable to be distributed
11 for up to two weeks?

12 MR. COLODNY: Objection, Your Honor. Asked and
13 answered.

14 THE COURT: Sustained.

15 MR. KIRSANOV: Is there a reason why CEL Token may
16 have not been able to be distributed?

17 MR. COLODNY: Objection.

18 THE COURT: Overruled. Do you know the answer to
19 that?

20 MR. FERRARO: We have -- I mean, there -- for
21 custody specifically, sir?

22 MR. KIRSANOV: Yes, for the custody settlement.

23 MR. FERRARO: Yeah, we can distribute CEL Token. I
24 think there's areas that we are still going through the
25 details on whether or not we can distribute coin back given

1 MTL laws, et cetera. But the plan is to --

2 THE COURT: It's a jurisdictional issue.

3 MR. FERRARO: Jurisdictional issue, the plan is to
4 distribute CEL back to custody holders.

5 MR. KIRSANOV: When did Celsius obtain the CEL
6 Tokens to pay out the initial custody claims?

7 MR. FERRARO: We had them on our balance sheet.

8 MR. KIRSANOV: Where will Celsius obtain the CEL
9 to distribute to -- the rest of the CEL Tokens to the
10 custody groups?

11 MR. FERRARO: We have ample supply on our balance
12 sheet.

13 MR. KIRSANOV: Why was the .21 cent CEL Token
14 valuation decided for the custody class on the plan vote
15 when the custody class, in a monetary majority, rejected the
16 CEL Token plan?

17 MR. COLODNY: Objection, Your Honor.

18 THE COURT: Sustained.

19 MR. KIRSANOV: How can Celsius distribute custody
20 assets aside from Bitcoin and Ethereum, to non-settling
21 custody class residents of Hawaii that voted no to the plan?

22 MR. BROWN: Objection, Your Honor.

23 THE COURT: Sustained.

24 MR. KIRSANOV: Can Celsius distribute custody
25 assets aside from Bitcoin and Ethereum, to Hawaii residents?

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MR. BROWN: Objection calls for --

THE COURT: Sustained.

MR. BROWN: Calls for legal conclusion.

MR. KIRSANOV: Can Celsius -- what value are CEL
Token holders provided to the non-settling custody class, to
residents of Hawaii?

MR. FERRARO: We plan to distribute CEL in kind to
the custody class. We are hoping that we can achieve that in
Hawaii. The system will be open for 90 -- the plan is for
the system to open, be open for 90 days post the effective
date, so that customers can get their in-kind distribution.
After 90 days, we have to shut the system down. We have to
reduce the employees. You know, so the distribution is
timebound. If folks come and get their in-kind distribution
within those 90 days, that, you know, they will be able to
leave the platform. Otherwise, that would be converted to
BTC and ETH and distributed by PayPal.

MR. KIRSANOV: The CEL Token valuation and
bankruptcy valuations is .81 cents. Is that true?

MR. BROWN: Objection.

THE COURT: Sustained.

MR. KIRSANOV: What is the CEL Token valuation and
bankruptcy valuation?

MR. BROWN: Objection.

1 THE COURT: Sustained.

2 MR. KIRSANOV: The valuation that was provided to
3 CEL Token claims and the custody class at deactivation date
4 is .25 cents. Is that true?

5 MR. FERRARO: That's the proposed settlement for
6 the CEL Token, yes.

7 MR. KIRSANOV: Chapter 7 liquidation values for
8 the custody class is 72 1/2 percent and 100 percent for pure
9 custody. Is this true?

10 MR. FERRARO: Can you say that again? I'm sorry.

11 MR. KIRSANOV: Certainly. In a Chapter 7
12 liquidation matter, the liquidation values for the custody
13 class are 72 1/2 percent, and 100 percent for pure custody.
14 Is that true?

15 MR. FERRARO: Yeah, but the custody coins will be
16 returned in kind. This is only --

17 MR. KIRSANOV: If, if the --

18 THE COURT: No, don't interrupt. Go ahead.

19 MR. KIRSANOV: All right.

20 MR. FERRARO: This is only the .25 cents as it
21 pertains to custody, is only in case they don't come within
22 the 90 days or we can't distribute and we have to convert it
23 to BTC or ETH, in which it's proposed to do at the
24 settlement price, is my understanding.

25 MR. KIRSANOV: If someone rejects the custody

1 agreement, what is the procedure with their custody
2 holdings?

3 MR. FERRARO: If somebody rejects -- I, I didn't
4 pick up the end. If somebody rejects -- can you say -- ask
5 again?

6 MR. KIRSANOV: Yes, certainly. If someone -- if a
7 class holder in the custody section rejects the plan, what
8 is the procedures of their assets?

9 MR. BROWN: Objection.

10 THE COURT: Sustained.

11 MR. KIRSANOV: If somebody in the custody class
12 rejects the plan, what happens?

13 MR. BROWN: Objection.

14 MR. COLODNY: Objection.

15 THE COURT: Sustained.

16 MR. KIRSANOV: Why does a Chapter 11 plan give
17 less to a CEL custody creditor than a Chapter 7 plan?

18 MR. BROWN: Objection.

19 MR. COLODNY: Objection.

20 THE COURT: Sustained.

21 MR. KIRSANOV: Is it in the best interest of the
22 CEL custody holder that does not accept the plan to prefer
23 Chapter 7 versus Chapter 11?

24 MR. BROWN: Objection.

25 MR. COLODNY: Objection.

1 THE COURT: Sustained.

2 MR. KIRSANOV: Do you think it is fair that a
3 creditor who could not move his custody funds ahead of the
4 freeze and bankruptcy filing date be subject to the .25 cent
5 deactivation valuation?

6 MR. FERRARO: I think we went through that, sir.
7 You have 90 days to come to the platform and take the coins
8 off in kind.

9 MR. KIRSANOV: After 90 days, it goes to the
10 deactivation date, is that correct?

11 MR. FERRARO: After 90 days it would be converted
12 to BTC and ETH at the settlement price, is my understanding,
13 yes.

14 MR. KIRSANOV: And the settlement price is less
15 than the bankruptcy date price, is that correct?

16 MR. FERRARO: I think the contested point is that
17 price and whether that was a real front value, given the
18 manipulation and the lack of trading volume. 95 percent is
19 locked on the platform.

20 MR. KIRSANOV: But the price is less, ultimately,
21 is that correct?

22 MR. FERRARO: I, I don't know, I mean --

23 THE COURT: .25 cents is less than .81 cents. Yes.
24 Ask your next question.

25 MR. KIRSANOV: That's it for now, Your Honor.

1 Thank you.

2 THE COURT: Thank you very much. Any other
3 questions? Any other cross-examination?

4 MR. DAVIS: Yeah, I have a cross-examination, Your
5 Honor.

6 THE COURT: All right, Mr. Davis.

7 MR. DAVIS: Sure, thank you. Mr. Ferraro, good
8 morning. My name's Otis Davis. I'm a Pro Se Creditor.

9 MR. FERRARO: Good morning. Sorry, I'm taking a
10 drink of water. Good morning, Mr. Davis.

11 MR. DAVIS: Now I'd like to turn to Docket 3532,
12 my Motion, page 6 of 29. Mr. Ferraro, are you aware of the
13 conversation that you had with Jason Perman, which were
14 included with my Motion filed with the Court at Docket 3532,
15 wherein you speak about creating a presentation
16 [indiscernible] financial information of Celsius?

17 MR. BROWN: Your Honor, I'm going to object. I
18 don't have exhibit lists, I don't --

19 THE COURT: Sustained. I ordered that any
20 documents that any party wished to use in cross-examination
21 had to be filed on the docket by 5:00 p.m. yesterday. My
22 desk is --

23 MR. DAVIS: Your Honor, we were --

24 THE COURT: Just a second. Don't interrupt. My
25 desk is piled with documents. There are thousands of

1 exhibits, there are thousands of entries on the docket. You
2 can ask questions, but unless you provided documents you
3 wish to use in cross-examination by last night, you can't
4 use anything. Go ahead.

5 MR. DAVIS: Mr. Ferraro, are you aware about
6 [indiscernible]

7 THE COURT: I'm sorry, you cut out.

8 MR. DAVIS: Mr. Ferraro, are --

9 THE COURT: Could you ask your question again?

10 MR. DAVIS: Sure. Mr. Ferraro, are you aware at
11 the moment of the pause on June 12th, 2022, the amount of
12 open short positions against CEL Token on FTX exploded from
13 8 million short positions to over 20 million short
14 positions?

15 MR. FERRARO: I've, I've read about it, I've been
16 in conversations about it. I haven't studied it uniquely.
17 I'm aware of the general discussion of this topic.

18 MR. DAVIS: Are you aware there were only about 5
19 million CEL Tokens on the FTX platform at the time of the
20 pause, and that 15 million of those 20 million short
21 positions were illegal [indiscernible] shorts?

22 MR. BROWN: Objection, Your Honor.

23 THE COURT: Sustained.

24 MR. DAVIS: Are you also aware that from the pause
25 to the petition date, over 17 million --

1 THE COURT: I sustained the objection to the last
2 question, so you can't ask whether he's also aware. If you
3 want to ask a question, ask a question.

4 MR. DAVIS: One second, Your Honor. Mr. Ferraro,
5 was the price of CEL Token at any time higher than .81 cents
6 from the pause, the petition date?

7 MR. FERRARO: My understanding is it went above
8 .81 cents at, at periods of time in that time period.

9 MR. DAVIS: Is it fair to state it went to \$1.60
10 as reflected in Mr. [Indiscernible] report?

11 MR. FERRARO: I don't have all the numbers in
12 front of me, but doesn't sound unreasonable that it could
13 hit that for a point in time, yes.

14 MR. DAVIS: Mr. Ferraro, is it your testimony that
15 you are aware of no other factors that could have moved the
16 price of CEL Token from the .28 cent closing price on the
17 date of the pause, to the \$1.60 price on June 22nd, to the
18 .81 cent price on the petition date?

19 MR. BROWN: Objection.

20 THE COURT: Sustained.

21 MR. DAVIS: Do you have any idea or explanation
22 why the price of CEL Token moved up to \$1.60 on June 22nd,
23 2022?

24 MR. BROWN: Objection.

25 THE COURT: Do you know, Mr. Ferraro, whether it

1 moved to that price or not?

2 MR. FERRARO: I don't know the exact price, no.

3 THE COURT: Sustained.

4 MR. DAVIS: Can you describe the extent and nature
5 of the contract that you or anyone were in Celsius that you
6 are aware of had with FTX or Alameda Research 3 months
7 prior to the pause?

8 MR. FERRARO: I'm only aware of interactions with
9 FTX and Alameda Research that went through our bankers. At
10 the time that was Citibank.

11 MR. DAVIS: Mr. Ferraro, do you know about how
12 many CEL Tokens Celsius purchased from the market between
13 the pause and the petition date?

14 MR. FERRARO: Zero.

15 MR. DAVIS: Thank you. Mr. Ferraro, would you be
16 surprised to know that Celsius did not -- sorry.

17 Mr. Ferraro, do you know how many CEL Tokens Celsius was a
18 net seller of for the combined months of June 2022 and July
19 2022, which included the entirety of the pause?

20 MR. FERRARO: I do not know the amount that you're
21 referencing, no.

22 MR. DAVIS: One second, Your Honor. Thank you,
23 Judge. I'm finished.

24 THE COURT: Thank you. Anyone else wish to cross-
25 examine?

1 MR. IOVINE: Yes. Jason Iovine, Pro Se Creditor.

2 THE COURT: Go ahead, Mr. IOVINE.

3 MR. IOVINE: I -- please excuse me, I'm not a
4 lawyer, so bear with me. Mr. Ferraro, can you tell us who
5 has control over the CEL Token contract, the administrator
6 rights of it?

7 MR. FERRARO: I, I'm not in technology so I'm not
8 a native crypto person. I believe the smart contract governs
9 it, but I don't have those details.

10 MR. IOVINE: So you don't know if Celsius has the
11 ability to freeze the CEL Token contract where the CEL Token
12 cannot interact with the contract?

13 THE COURT: I don't understand your question.

14 MR. IOVINE: How can I explain it. The contracts
15 have -- some contracts have the ability to freeze so they
16 cannot interact with the contract. It's kind of like
17 removing a stock from trading.

18 MR. BROWN: Your Honor, can he ask the question
19 again?

20 THE COURT: Ask the question and we'll see what
21 we, what -- go ahead.

22 MR. IOVINE: Okay, go ahead. Sorry. You said you
23 don't know if Celsius, or who has control over the contract.
24 So let me ask, as in, like, any equity that's traded when a
25 company goes into bankruptcy, it should -- it gets delisted

1 or a Q put on the end of it. Why wasn't that done with CEL
2 Token?

3 MR. FERRARO: I mean, CEL Token is traded on
4 exchanges. There was a supply outside of what was on the
5 platform that was locked.

6 MR. IOVINE: Okay. Now, with what was being said
7 is that CEL Token is dependent on Celsius. Was there any
8 other financial institutions that used CEL Token?

9 MR. FERRARO: I'm not sure I understand the
10 question.

11 MR. IOVINE: As I know as BP Finance, Chedal [ph],
12 DeFi protocols that used it for lending and borrowing, yield
13 farming. Is that correct?

14 MR. FERRARO: I, I --

15 MR. IOVINE: Good swap also.

16 MR. FERRARO: I'm -- CEL Token was widely held, so
17 it was held by many people in different entities. And there
18 was some use of CEL in yield farming on exchanges, et
19 cetera. But I don't know the depths of it, and I don't think
20 it was that deep of a market, to my understanding.

21 MR. IOVINE: Okay, so it had been solely
22 independent of Celsius.

23 MR. FERRARO: Um --

24 THE COURT: I don't understand your question.

25 MR. IOVINE: It goes to --

1 THE COURT: Just ask, just ask questions.

2 MR. IOVINE: CEL Token was --

3 THE COURT: Just ask questions.

4 MR. IOVINE: Okay.

5 MR. BROWN: Your Honor, I just want to note for
6 the record, our notes indicate that Mr. IOVINE actually
7 voted to accept the plan.

8 THE COURT: I'm going to let -- Mr. Brown, sit
9 down.

10 MR. BROWN: I understand.

11 THE COURT: Mr. Brown. Mr. IOVINE, go ahead.

12 MR. IOVINE: Thank you, sir. Is it not reasonable
13 to think that CEL Token could've had a future with Celsius
14 during the pause time, because Celsius was lacking
15 communications and they were still paying out rewards to the
16 accounts?

17 MR. BROWN: Objection, Your Honor.

18 THE COURT: Sustained.

19 MR. IOVINE: Okay, Your Honor, that's about all.

20 THE COURT: All right. Anybody else wish to cross-
21 examine?

22 MR. PHILLIPS: Yes, Your Honor. Yes.

23 THE COURT: All right, it was Mr. Phillips.

24 MR. PHILLIPS: Thank you, Your Honor.

25 MR. IOVINE: I don't care if I accept it.

1 THE COURT: Excuse me. Mr. Phillips, you wish to
2 question?

3 MR. PHILLIPS: Yes, I do.

4 THE COURT: Go ahead.

5 MR. PHILLIPS: Thank you. Mr. Ferraro, I'm going
6 to follow, essentially, the order of your Declaration. And
7 so I'd like to turn to Paragraph Number 9.

8 THE COURT: Which of the Declarations? Because
9 there are several that have been admitted into evidence.

10 MR. PHILLIPS: 3581. Mr. Ferraro's got it up
11 there.

12 THE COURT: Okay, what paragraph? I have it open
13 in front of me as well.

14 MR. PHILLIPS: It's A, Section of Officers and
15 Directors, Number 9.

16 MR. FERRARO: Yes, I'm there.

17 THE COURT: Go ahead.

18 MR. PHILLIPS: Okay. The sentence that says 'I
19 discussed the selection process with the Committee and the
20 Plan Sponsor and understand that it was, is, and will be
21 consistent with the . . . Holders of Claims, the Claims and
22 Interests and public policy.' Why do you say that?

23 MR. FERRARO: I did discuss the selection of the
24 Board with the cochairs of the Committee, and Steve Kokinos
25 of Fahrenheit. And I think that their selection process was

1 robust, and I think they picked a really good Board.

2 MR. PHILLIPS: And why do you believe it's
3 consistent with the interests of the holders of the claims
4 and interests?

5 MR. FERRARO: I think that there's representation.
6 the UCC was able to -- the creditors picked the vast
7 majority, the majority of the Board seats. So -- and there's
8 representation from the creditors, there's also Board
9 observers. I think the interests are aligned.

10 MR. PHILLIPS: Okay. On Paragraph Number 20
11 discussing the Third-Party Release. You state that 'the
12 Third-Party Release is a wholly consensual release and that
13 all Holders of Claims entitled to vote had the opportunity
14 to opt out of the Third-Party Release.' Do you think that
15 there is a difference between a wholly consensual and a
16 coercive release?

17 MR. BROWN: Objection.

18 THE COURT: Sustained.

19 MR. PHILLIPS: Why do you believe that the release
20 was wholly consensual?

21 MR. FERRARO: It was on the ballot. Folks could
22 opt out.

23 MR. PHILLIPS: Could you opt out of it if you
24 voted yes?

25 MR. FERRARO: My understanding is, yes.

1 MR. PHILLIPS: I don't believe that's correct.

2 MR. FERRARO: Maybe I'm confused, I'm sorry. You
3 vote for the plan, then, yeah, you're, you're supporting the
4 releases.

5 MR. PHILLIPS: All right. And if you wanted to
6 avail yourself of the preference avoidance settlement, could
7 you opt out of the release?

8 THE COURT: If you know the answer, go ahead.

9 MR. FERRARO: I don't. I'm, I'm stalling, I
10 apologize, sir.

11 THE COURT: No, it's not stalling. The Plan is a
12 lengthy document. The Ballot was a lengthy document. If you
13 know the answer, you can answer it.

14 MR. FERRARO: I do not know the answer.

15 THE COURT: Otherwise, it's okay.

16 MR. FERRARO: Yeah, I do not know the answer.

17 THE COURT: Go ahead, Mr. Phillips.

18 MR. PHILLIPS: Okay. So, are you still concluding
19 that the release was wholly consensual.

20 MR. FERRARO: Yes.

21 MR. PHILLIPS: On Paragraph 21, you mention
22 receiving informal comments from the SEC. What were those
23 comments?

24 MR. FERRARO: My understanding is, if a class was
25 deemed to reject, that they would have -- they would not --

1 they would need to opt into the release.

2 MR. PHILLIPS: That was the comment from the SEC?

3 MR. FERRARO: That's my understanding.

4 MR. PHILLIPS: Okay. And when you said
5 'exculpation,' which I know Ms. Cornell covered extensively,
6 Paragraph 26, how many exculpation provisions have you
7 previously applied upon?

8 MR. BROWN: Objection.

9 THE COURT: Sustained.

10 MR. PHILLIPS: On what basis do you believe that
11 the exculpation provision in the plan is appropriate?

12 MR. FERRARO: I think I testified to this earlier.
13 I think it's a critical component, and it was arms-length
14 transaction with these parties. They're supporters of the
15 plan and they've contributed to the plan.

16 MR. PHILLIPS: And Ms. Cornell dug into this in
17 Paragraph 27 a little bit. But you stated that 'The
18 exculpation provision is critical to ensuring that funds
19 could be returned to creditors as promptly as possible
20 through the transactions that are approved by the Bankruptcy
21 Court . . .' Is it critical to all the exculpated parties,
22 or are there only certain parties that are exculpated that's
23 critical so that funds can be returned?

24 MR. FERRARO: We went through some examples on
25 exculpations. I think that they're critical.

1 MR. PHILLIPS: So why, for example, is it critical
2 that the Debtors' attorneys, K & E, be exculpated for the
3 funds to be returned?

4 MR. FERRARO: I mean, they're part of that, they
5 are part of that process. They are part of contract
6 negotiations, they are part of setting up the way in which
7 the different counter-parties -- Celsius, the Debtor and
8 PayPal and Coinbase -- interact.

9 MR. PHILLIPS: But why do they need the protection
10 of the exculpation? They're highly sophisticated lawyers and
11 been paid significant fees to set this up appropriately. Why
12 do they need the additional protection of the exculpation to
13 shield them from any potential liability from how the
14 distribution [indiscernible]

15 MR. FERRARO: We're not really -- there's, there's
16 -- we're not really giving up anything, we know of no issues
17 where there's any potential claims, causes of action against
18 any of these folks. So, I mean, we -- these -- we've gotten
19 to a good place in this case with the contribution of all
20 these parties, and I think that's the reason why we're
21 comfortable giving these exculpations.

22 MR. PHILLIPS: Doesn't exculpation cover known and
23 unknown claims?

24 MR. FERRARO: That's my understanding. And as I
25 said, we -- there is nothing that we know that would, you

1 know, prevent us. There's been tons of investigations that
2 have gone into this, from the examiner to the special
3 Committee, to the UCC. And all of these parties have come
4 out clean on this.

5 MR. PHILLIPS: I'm not saying that they did
6 anything wrong, but I'm saying that they should stand up for
7 their work on their own two feet, not be shielded by
8 exculpation. I don't understand that.

9 THE COURT: That may be your position, but ask
10 questions.

11 MR. PHILLIPS: So why do you think that the
12 professionals who advise both the Debtor and the Committee
13 are in need of exculpation for the distributions to actually
14 be -- to have effect, to actually take place and have
15 effect?

16 MR. FERRARO: I mean, I think we've gone through
17 some of these details. Both parties have reviewed the
18 contracts. Both parties, UCC advisors as well as the
19 Debtors' legal advisors, helped negotiate the contract, set
20 up the processes for the distribution with the Debtors'
21 internal team. So significant contributions have been made.

22 MR. PHILLIPS: That's all I have.

23 THE COURT: Thank you very much, Mr. Phillips.
24 Anybody else wish to cross-examine?

25 MR. BRONGE: Your Honor, yes. This is Johan

1 Bronge, Pro Se Creditor.

2 THE COURT: Okay, Mr. Bronge, go ahead.

3 MR. BRONGE: Yes. Good morning, Mr. Ferraro.

4 MR. FERRARO: Good morning.

5 MR. BRONGE: I'm a [indiscernible] and a CEL
6 accountholder on the CEL platform. I want to ask you a
7 little bit about ownership at the, of the collateral. And to
8 do that, I would like to refer to the Terms of Service
9 Version 7 that is Docket 393, and it starts on Page 858.

10 THE COURT: Mr. Bronge, Mr. Bronge?

11 MR. BRONGE: Yes.

12 THE COURT: I ordered that anybody wishing to use
13 a document in cross-examination had to post it on the docket
14 by 5:00 p.m. yesterday. I can't magically -- I'm sorry, I
15 can't magically make it appear for purposes of cross-
16 examination. If you wish to ask --

17 MR. BRONGE: But I think this is --

18 THE COURT: Don't, don't interrupt me. If you wish
19 to ask questions without the use of documents, if the
20 witness knows about it, he can. But, you know, I'm
21 permitting people to cross-examine by using Zoom, but it was
22 essential that everyone know what documents anybody wishing
23 to cross-examine is using, they be made available on the
24 docket last night. So I'll permit you to continue with your
25 questioning, but not referring to documents that have not

1 been provided for cross-examination.

2 MR. BRONGE: This is under exhibit list of the
3 Debtor. So it's in the, the docket as well.

4 THE COURT: Mr. Bronge, if you wish to cross-
5 examine on a document, you have to post it by 5:00
6 yesterday. If you wish to --

7 MR. BRONGE: Okay.

8 THE COURT: -- ask questions without regard to
9 documents, go ahead and do that.

10 MR. BRONGE: All right. Mr. Ferraro, could you
11 explain what rationale the Debtor has to consider the
12 collateral property of the estate?

13 MR. FERRARO: I mean, somewhat of a legal
14 question. But in reviewing the Terms of Use, I mean, there's
15 language that says you can pledge, repledge, lend out, et
16 cetera. It's pretty consistent with the Terms of Use there.

17 MR. BRONGE: So in reference to your answer, there
18 is a -- we could agree that there is a distinction between
19 ownership title and pledging or using an asset.

20 MR. BROWN: Objection, Your Honor.

21 THE COURT: Sustained.

22 MR. BRONGE: So, is it possible to use an asset
23 without owning an asset?

24 MR. BROWN: Objection.

25 THE COURT: Sustained.

1 MR. BRONGE: Can you explain how you define
2 ownership from the Debtor in relation to assets?

3 MR. BROWN: Objection, Your Honor.

4 THE COURT: I'm going to permit the witness to
5 answer. It's not, he's not a lawyer and he's not giving a
6 legal opinion. If you're able to answer that, go ahead.
7 Otherwise, please say.

8 MR. FERRARO: Can you please restate the question?

9 MR. BRONGE: Yes. I want to understand how the
10 Debtor determines the ownership status of an asset. What
11 they base those on.

12 MR. FERRARO: I'm not a lawyer. I think that's
13 clear in the Terms of Use.

14 MR. BRONGE: Okay. So may I ask a procedure
15 question to the Judge?

16 THE COURT: Go ahead.

17 MR. BRONGE: Yes. If I want to examine the
18 conditions in the TOS that is listed on that Debtors'
19 exhibit list, how should I do that?

20 THE COURT: If it's listed on the Debtors' exhibit
21 list, I have all of those documents in front of me. I'll
22 permit you to use the exhibits that the Debtor marked.
23 They're all before the Court. They're all before any
24 parties. So yes, you can go ahead and do that. Just identify
25 the exhibit and give everyone a chance to pull it out, okay?

1 MR. BRONGE: Yes. Okay. I think what I tried to do
2 originally is the exhibitor list, I think it was 44 on the
3 Debtor, on the Debtor list presented, and it's reference to
4 the Terms of Service.

5 THE COURT: Well, Exhibit 44 is the Declaration of
6 Mr. Ferraro. It was marked and admitted in evidence this
7 morning.

8 MR. BRONGE: Exactly.

9 THE COURT: But it does not have Terms of Service
10 or --

11 MR. BRONGE: Yes it --

12 THE COURT: Terms of Use attached.

13 MR. BRONGE: It does, it does have it as a
14 reference.

15 THE COURT: Well, it does not have the exhibit.
16 Hold on, I think the, the Debtors' counsel is going to help
17 you out on this one.

18 MR. BROWN: Going to try to, Your Honor.

19 THE COURT: Yeah.

20 MR. BROWN: The Terms of Service were admitted
21 into evidence as Exhibit 38. They're not in the binder,
22 they're -- that's the paragraph that was referenced in
23 Exhibit 44 that we went through. I have a binder with
24 Exhibit 38. I can bring it to Your Honor and Mr. Ferraro so
25 everybody has a copy.

1 THE COURT: Please. Thank you.

2 MR. FERRARO: Could he also bring me another
3 water? It's a lot of talking, sorry.

4 THE COURT: There probably is water in that
5 pitcher.

6 MR. FERRARO: Oh, oh, even better. Thank you.

7 THE COURT: There should. If not, my apologies.

8 MR. FERRARO: Yeah, yeah, I think you're right. I
9 assumed that was just there for aesthetics.

10 THE COURT: No, no. Aesthetics and for your use.

11 MR. FERRARO: Okay, thank you, thank you. Okay.

12 THE COURT: Exhibit 38 has been placed in front of
13 the witness. It's Terms of Use --

14 MR. BROWN: And Your Honor --

15 MR. BRONGE: Thank you. So may I --

16 THE COURT: Hold on just a second.

17 MR. BROWN: I just want to clarify before
18 Mr. Bronge gets going here. Exhibit 38, as I stated
19 previously, is a compilation of all Terms of Service that
20 were filed on the docket previously. I can get that docket
21 entry. I don't know what page, which version of the Terms of
22 Service, what he's interested in. So Exhibit 38 is
23 approximately 11, 1,200 pages.

24 THE COURT: Okay, so Mr. Bronge, you're not here,
25 so you don't see it. But the --

1 MR. BRONGE: I have it here, so --

2 THE COURT: Just a second.

3 MR. BRONGE: -- I will be fine.

4 THE COURT: -- 38 is 1,026 pages long. It has a
5 compilation of all of the versions of the Terms of Use,
6 starting with Terms of Use 1. So you need to be more
7 specific as to which version of the Terms of Use --

8 MR. BRONGE: I will --

9 THE COURT: -- you're referring to.

10 MR. BRONGE: -- I will be extremely specific, Your
11 Honor. I would like to go to Page 858.

12 THE COURT: All right, just a second. All right, I
13 have it open in front of me. Mr. Ferraro, when you have Page
14 858 of 1,026 open, just please tell me that.

15 MR. FERRARO: I'm there.

16 THE COURT: Go ahead, Mr. Bronge.

17 MR. BRONGE: Thank you. So this page is Celsius
18 Loan Terms and Condition, and this is in reference to
19 Version 7. Version 7 is the conditions under which I took my
20 first loan. So that's why I refer to this one. Because also
21 in this document it states that the loan is controlled by
22 the version of the TOS that was in force when the loan was
23 taken. So if we move on to definitions, Number 3, I would
24 like to understand -- I would like to know your
25 understanding of that sentence's definitions Number 3. If

1 you could read it, please.

2 MR. FERRARO: Number 3. Collateral means the
3 amount in eligible digital assets as provided by the
4 Borrower to the Lender as security for the loan.

5 MR. BRONGE: Okay. Is there anything in that
6 statement that indicates that I have transferred ownership
7 in your opinion?

8 MR. BROWN: Objection. Calls for legal conclusion.

9 THE COURT: Overruled. It says what it says,
10 Mr. Bronge.

11 MR. BRONGE: Yes, and I'm trying to understand how
12 the Debtor can consider the collateral his property, and
13 that's why I want to understand, what in this sentence
14 indicates that this is the Debtor's property.

15 MR. FERRARO: I don't think that that's the
16 sentence that refers to the property. That's talking about
17 the collateral that's provided by the borrower as security
18 for the loan.

19 MR. BRONGE: Okay, so, that's fine, so we
20 understand, from this sentence, the collateral has no --

21 THE COURT: Just ask your question, Mr. Bronge.

22 MR. BRONGE: Okay, next -- all right. Next, I
23 would like to go to Page 859 under ineligibility and
24 Application [indiscernible] D. So can you see what that
25 says?

1 MR. FERRARO: Celsius receives the collateral from
2 you and.

3 MR. BRONGE: Yeah, so, just want to state that
4 this collateral comes from the borrowers there, is that
5 correct?

6 MR. FERRARO: You broke up a little bit. That
7 collateral comes from what?

8 MR. BRONGE: It's the collateral -- my
9 understanding, and I want to understand if the Debtor has
10 the same, is that the collateral comes from the borrower.

11 MR. FERRARO: For security on the loan, yes.

12 MR. BRONGE: Thank you. Then we move to Page 860,
13 Item 1. So I can read the relevant part here. It's in --
14 from the sentence after what is called deferred event. It
15 says Celsius may immediately liquidate the corresponding
16 amount from your collateral. Would you consider that meaning
17 the borrower's collateral, or is this somehow the Debtor's
18 collateral?

19 MR. FERRARO: I think it's referring to the
20 collateral that was posted to secure the loan.

21 MR. BRONGE: So, but 'your' in this sentence,
22 doesn't that refer to the borrowers, the owner of the
23 collateral?

24 MR. FERRARO: No, I think it's referring to the
25 one that provided the collateral for the loan. At least,

1 that's my reading. Not a lawyer, again.

2 MR. BRONGE: So 'your collateral' in your mind is
3 not the borrower's, it is somebody else's. Even though it
4 states to the borrower.

5 MR. FERRARO: Provided by the borrower as security
6 for the loan, security interest for the loan.

7 MR. BRONGE: I'm just reading -- I cannot put in
8 any words there, I'm just reading the sentence as it is. So
9 'your collateral' do you consider that be 'your' referring
10 to the Debtor in this case or the borrower?

11 MR. FERRARO: I think it's referring to the
12 borrower who provided collateral as security for the loan.

13 MR. BRONGE: All right. So there is a number of
14 sentences where it always refers to 'your collateral.' And
15 since 'your' in this, in this context would be the borrower
16 who provided the collateral, is that your understanding?

17 MR. FERRARO: I think, I think we went over this a
18 couple times. My understanding is it's referring to that the
19 borrower provided collateral as security interest for the
20 loan.

21 MR. BRONGE: Okay, so we continue here. If we go
22 to Page 862, under Collateral Item C. So here, I can read
23 the sentence. It says 'Collateral shall be subject to a
24 pledge for Celsius' benefit in accordance with the terms
25 herein.' Can you explain how that sentence transfers

1 ownership and title of the collateral?

2 MR. BROWN: Objection, Your Owner. Calls for a
3 legal conclusion.

4 THE COURT: Overruled. If you know.

5 MR. FERRARO: So, I'll do my best.

6 THE COURT: You're not testifying as a lawyer.

7 MR. FERRARO: I'm not testifying as a lawyer, I
8 will do my best. I think what it says here is subject to a
9 pledge for Celsius' benefit. And if I may, on Page 869 of
10 1,126, Section B --

11 MR. BRONGE: Excuse me, I --

12 THE COURT: Yes.

13 MR. BRONGE: You broke up, so --

14 THE COURT: Okay, [indiscernible] go ahead. Just
15 read it loudly.

16 MR. FERRARO: Sorry. Page -- I have this huge
17 binder on my lap and it's hard to get too close, so --

18 THE COURT: Me, too.

19 MR. FERRARO: -- on Page 869 of 1,126, Conditions
20 to the Lender Obligation, D, this kind of refers to how the,
21 how the borrower agrees that the lender may, for its own
22 account, pledge and repledge.

23 MR. BRONGE: Okay. I understand. Now, in your
24 review, is pledging an asset the same as transferring title
25 of an asset?

1 MR. BROWN: Objection, Your Honor.

2 THE COURT: Sustained.

3 MR. BRONGE: Okay. What -- if, if you contrast the
4 statements in this section with the statements of the UK
5 Lending where there is a sale and repurchase agreement,
6 which is -- you can find much later in this. I can refer to
7 the exact pages. That -- the statements are very different
8 where they explicitly state you transfer title. I would like
9 to understand where in this Terms of Service Version 7 there
10 is a statement that I transfer ownership title. Do you have
11 that? Do you know about any such statement in this version?

12 THE COURT: I'm going to sustain an objection to
13 the questions. I will permit a question as to whether, you
14 know, there is anything in this version of the Terms that
15 you believe transfers ownership.

16 MR. FERRARO: From my reading of this, it implies
17 transfer of ownership, right to pledge. Not a lawyer, again.
18 Lender may do so without retaining, retaining its possession
19 to control for delivery. Borrower agrees that it can do it
20 for its own account. So it's obviously transferring a lot of
21 rights to Celsius.

22 THE COURT: Ask your next question, Mr. Bronge.

23 MR. BRONGE: Yes. So you consider transferring
24 rights as the same as transferring, as the same as
25 transferring title?

1 MR. BROWN: Objection, Your Honor.

2 THE COURT: Sustained.

3 MR. BRONGE: Okay, so can I maybe ask him a
4 different way, if --

5 THE COURT: Let me --

6 MR. BRONGE: Yes.

7 THE COURT: Go ahead, Mr. Bronge.

8 MR. BRONGE: Yeah, I'm trying to get the Debtor to
9 explain the way they interpret this section. I don't know if
10 I should ask --

11 THE COURT: Mr. Bronge, I'm not asking questions
12 of the witness, but this is a long document. If you look on
13 Page 870 under Consent to Celsius' use of your Digital
14 Assets --

15 MR. BRONGE: Yes, that is --

16 THE COURT: -- transferring with all, transferring
17 with all attendant rights of ownership. So I think --

18 MR. BRONGE: Yes, let me --

19 THE COURT: -- you're asking a non-lawyer
20 questions about a lengthy document.

21 MR. BRONGE: How in proceedings shall I ask these
22 questions? Should it be at a later date?

23 THE COURT: I'll let you continue with questions,
24 but you can't ask for legal opinions. This is a lengthy
25 document.

1 MR. BRONGE: So how can I ask --

2 THE COURT: -- paragraph on Page 870, under
3 Consent to Celsius' use of your digital assets, where it
4 says --

5 MR. BRONGE: May I address that question?

6 THE COURT: -- it says with all right, attendant
7 rights of ownership.

8 MR. BRONGE: It says, first of all, that --

9 THE COURT: I'm not going to have a legal argument
10 about this.

11 MR. BRONGE: No.

12 THE COURT: If you want to ask a question, ask,
13 questions --

14 MR. BRONGE: I understand.

15 THE COURT: -- of the witness, I'm going to permit
16 you to do that.

17 MR. BRONGE: Yes. I understand. But I will not
18 continue these questions because obviously I cannot answer,
19 ask them to the right person. So is there any time in the
20 hearing I can ask these legal questions regarding this Terms
21 of Service?

22 THE COURT: You can't ask the lawyers about it.
23 You'll, you know, when we get to closing argument and you
24 wish to argue that a document in evidence means what you say
25 it means, you can argue that. But that's pure argument, not

1 evidence. The document itself is in evidence. And you can --
2 when we get to the conclusion of the case, if you wish to
3 file a memorandum of law, I'll permit you to do that. But
4 this is not a proper subject for a question of this non-
5 lawyer.

6 MR. BRONGE: Okay. So in that case, I --

7 THE COURT: Do you have any other questions,
8 Mr. Bronge?

9 MR. BRONGE: Just one quick question on the
10 valuation of the CEL Token, if I May.

11 THE COURT: Go ahead.

12 MR. BRONGE: I would like to understand the reason
13 why the Debtor are distinguishing the CEL Token as different
14 from all the other tokens except Bitcoin, that it has been
15 on the Celsius platform, and why this is singled out for
16 some kind of reasoning for that rather than all the other
17 coins taken the value at the bankruptcy.

18 MR. FERRARO: I mean, I think CEL Token, there's a
19 few things. One, the manipulation of the token. And two, the
20 fact that 95 percent of it was locked on the platform and
21 there was limited trading volume. It was kind of a
22 dislocated market at that point. Those are just two things
23 that are top of mind.

24 MR. BRONGE: So do you know that that does not
25 apply to any of the other tokens? Because they are all the

1 same except Bitcoin. They have a central entity and they
2 have treasuries and they have companies in charge of them.

3 THE COURT: Mr. Bronge, the CEL Token is a native
4 token of the Celsius platform.

5 MR. BRONGE: Let me make [indiscernible]

6 THE COURT: Do you have a question for the
7 witness?

8 MR. BRONGE: No, I have no more questions.

9 THE COURT: All right. Anybody else wish to cross-
10 examine?

11 MR. ABREU: Your Honor, Artur Abreu
12 [indiscernible] I want to be very brief and I just want to
13 ask question to the witness.

14 THE COURT: Go ahead, Mr. Abreu.

15 MR. ABREU: Thank you. I am Pro Se Creditor and I
16 actually bought CEL outside, outside, outside
17 [indiscernible] just so, just a disclosure. So, Chris
18 Ferrera, you mentioned that in this hearing that mining has
19 had significant hurdles, but it has been successful
20 considering the circumstances. You also refer that you had
21 implemented or were successful in hedging strategies. As I
22 am aware, you have significant experience in banking. Is it
23 fair to also argue that hedging in banking is a essential
24 strategy to mitigate risk?

25 MR. BROWN: Objection, Your Honor, relevance.

1 THE COURT: overruled.

2 MR. FERRARO: I think any manager of a business
3 should understand the risks and try to mitigate them to a
4 residual level that's acceptable. So when we look at the
5 mining business, we think about what our main kind of
6 components of risk, BTC -- that we can hedge, BTC price and
7 energy. When we think about banking, there's many different
8 types of market and credit risk in which you do the same
9 type of exam--, you know, you cascade risk and you do the
10 same type of analytics related to.

11 MR. ABREU: Thank you, thank you. Could you
12 explain your understanding of hedging, in the basic form.

13 MR. FERRARO: With regards to?

14 THE COURT: Keep it, you know, focused on Celsius
15 and --

16 MR. ABREU: Yeah, okay, so let's imagine this.

17 THE COURT: This is not an educational course in
18 hedging. Go ahead.

19 MR. FERRARO: Okay.

20 MR. ABREU: Well let me rephrase it, then.

21 THE COURT: He's going to answer your question. Go
22 ahead.

23 MR. ABREU: Okay.

24 MR. FERRARO: Yeah, I think there's two things.
25 One first comes to mind, and I think that's predominantly

1 what we're discussing here, is the hedging out of the power
2 costs related to running the mining rigs.

3 MR. ABREU: Okay, if you were to hedge CEL Token,
4 what will the company do? I'm sure you probably had the
5 discussions internally or you see some of the strategies.
6 Can you share to the Court what type of strategies in the
7 case of hedging CEL Token would imply?

8 MR. FERRARO: I joined Celsius in March of 2022.
9 You know, we froze in mid-June. I was involved in a lot of
10 conversations, did a lot of work during that time period. I
11 do not remember talking about macro hedges on CEL Token. And
12 I'm not even sure there's market depth to do it at the scale
13 that you're implying.

14 MR. ABREU: Okay, let me then tell you this. Do
15 you think shorting is an important tool to do an hedge of an
16 asset?

17 MR. BROWN: Objection.

18 THE COURT: Overruled. Focus on Celsius. If you
19 have an answer, go ahead. If you haven't, you don't have an
20 answer, just say that.

21 MR. FERRARO: I think hedging depends on the risk,
22 the specific risk you're trying to hedge out and the cost of
23 hedging out that risk versus the tail you're trying to
24 protect against.

25 THE COURT: Next question, Mr. Abreu.

1 MR. ABREU: Let me say this. Do --

2 THE COURT: Just ask questions. I don't want any
3 statements.

4 MR. ABREU: Okay, yeah, yeah, yeah.

5 THE COURT: Just ask questions.

6 MR. ABREU: Are you familiar with shorting? Do you
7 understand shorting an asset?

8 MR. FERRARO: I'm not a shorter. In my investment
9 --

10 MR. ABREU: But you understand, you understand?

11 MR. FERRARO: I understand it generally, yes.

12 THE COURT: You understand, it's one of the things
13 that's said, that certainly an allegation that insiders
14 manipulated the price of the CEL Token certainly near the
15 end, correct?

16 MR. FERRARO: Yeah, my understanding is that the
17 CEL Token was manipulated, really, throughout its existence,
18 yeah.

19 THE COURT: Okay.

20 MR. ABREU: Okay, so as you said, that you have
21 some basic understanding of short. Do you think shorting can
22 add market value to an asset, even if the underlying
23 business is bankrupt? I'm sure with your experience in
24 financials that you have seen companies on the market that
25 went bankrupt but still their underlying stock spikes in

1 price, even when the company is bankrupt. Do you think
2 shorting can add some value to a bankrupt company or asset
3 tied to this company?

4 MR. BROWN: Objection.

5 THE COURT: Sustained.

6 MR. ABREU: Okay. Just do you also believe that
7 faced with the level of misrepresentation that has been said
8 in court by officers and the company itself, do you think
9 it's fair to say that the market was not completely aware of
10 the level of risk and leverage that the company was in at
11 the pause and at the petition date?

12 MR. FERRARO: Yeah, I think the general financial
13 conditions of Celsius leading up to the pause were very
14 poor. And I'm not sure that that was reflected in the
15 disclosures to the marketplace.

16 MR. ABREU: There were many instances in this
17 process that I believe the company itself was trying to come
18 with a reorg. Which, let's say previous [indiscernible] was
19 putting CEL as maybe a way to reorg it around it. When was
20 this completely taken out of the discussion and it was then
21 pursued the current framework reorg plan?

22 MR. FERRARO: CEL has never been taken out of the
23 discussion. We've always thought about CEL in an equitable
24 way to solve this issue from the beginning.

25 MR. ABREU: When were the employees and the

1 company -- when did the previous leadership and their
2 associated reorg [indiscernible] removal from the company?

3 MR. FERRARO: It was never removed. This whole
4 process has been iterative and learning and organic. As I
5 mentioned earlier in my testimony, we spent a lot of time
6 developing an internal standalone plan. We determined that
7 the NovaWulf sponsor plan as a stalking horse bid was the
8 right route and went into the auction accordingly.

9 MR. ABREU: About company compensation. Are you
10 aware of whether your former insiders and former officers,
11 former officers of the company who received CEL as
12 compensation? If any of former officer are not included in
13 the excluded parties from this plan. So are former officers
14 with significant compensations of CEL not an excluded party?

15 MR. FERRARO: There are people who have
16 concentrations of CEL who through the investigations was not
17 determined that they were not bad actors. And because of
18 that, they're not on the excluded party list. That's my
19 understanding.

20 MR. ABREU: In the matter of compensation to those
21 officers I'm -- this former officers, was this compensation
22 given at a zero bust or the employee, former employee,
23 meaning they just received a zero balance and had to pay
24 taxes?

25 MR. FERRARO: It was part of the compensation

1 structure. Employees were rewarded in salary, discretionary
2 bonuses, equity up front and CEL Tokens. So this was one of
3 the key components of it.

4 MR. ABREU: So you are saying that former officers
5 and employees were both compensation in terms of equity and
6 CEL Token at zero value for -- at zero cost for them, but at
7 cost for the company and for the investors were potentially
8 being diluted by more market supply. Is that a fair
9 assessment?

10 MR. FERRARO: I look at it as total compensation
11 in which CEL Token equity and salary and discretionary
12 bonuses are different components of compensation. So it was
13 included for numerous employees.

14 MR. ABREU: So it's fair to say that at some
15 point, an officer could just receive both CEL as
16 compensation at zero cost and equity on the company at zero
17 cost, is that right?

18 MR. FERRARO: They're working for --

19 MR. ABREU: There was, mm-hmm, so there were two
20 vehicles for compensation, correct?

21 MR. FERRARO: It's a full compensation structure
22 in which employees committed their time and effort in return
23 for compensation. In which, I just named four main
24 components of that compensation.

25 MR. ABREU: Yeah, and they will also receive a

1 salary and then compensation on top of that, what could be
2 CEL or equity, correct? So that's what you're saying?

3 MR. FERRARO: I said it four, four times. There's
4 four components of compensation, and employees were largely
5 eligible for those four components.

6 THE COURT: Ask your next question.

7 MR. ABREU: Yeah, so is it fair to say that
8 according to [indiscernible] Declaration by the Debtors,
9 that 94 percent of the CEL supply was locked.

10 MR. FERRARO: That's my understanding --

11 MR. ABREU: Yeah, that's, that's around --

12 MR. FERRARO: In reading -- sorry, sir. In
13 reading, in reading that Declaration you're referring to,
14 that's my understanding.

15 MR. ABREU: Yeah, but I think you have previously
16 mentioned --

17 THE COURT: Let's not argue, ask questions.

18 MR. ABREU: Yeah, so my point here, and final
19 question, is that I -- let me just give a follow up for the
20 next question. When you were shorting, you have to put
21 collateral. So imagine that I'm going to short CEL Token,
22 which is at \$1. I use \$10,000 to take a loan of CEL at \$1,
23 and then I, then I sell into the market. I receive \$1,000 of
24 CEL. So now I have \$2,000 of CEL but a debt of \$1,000.

25 MR. FERRARO: Mm-hmm.

1 MR. ABREU: If the price of CEL, because I have a
2 liability, a debt to the exchange, which is 1,000 CEL
3 Tokens, if the price increases by 100 percent, which means
4 it doubles, it's your understanding that I will be
5 liquidated and the previous collateral that I use to take
6 that short position or take that loan on CEL will be
7 liquidated and used, and will be transferred to the market.
8 Is that a clear, a correct assessment of shorting?

9 MR. BROWN: Objection.

10 THE COURT: Sustained.

11 MR. ABREU: I just, just to finalize, what is the
12 percentage of loans, of international loans in terms of
13 users? Is that 50 percent, 51 percent? Can you give a round
14 number?

15 MR. FERRARO: I don't have the statistics in front
16 of me, but I think generally it's about half. Generally.

17 MR. ABREU: Do you understand that there was a
18 difference between the loans international and domestic, and
19 US-based loans? Do -- are you aware of any differences?

20 MR. FERRARO: The UK comes to mind in terms.

21 MR. ABREU: Let me give you an example. I was an
22 international creditor, and I took a loan. I could pay with
23 CEL, right? Because I was international. There were a few
24 options that I got in discount on my interest because I was
25 paying with CEL. Was that a product that Celsius had just

1 for international users, but US users were not -- this
2 product was not available?

3 MR. FERRARO: I -- sorry, I didn't run product and
4 while this product was active I had a very short amount of
5 time with the company, so I'm not knowledgeable of all the
6 details. So I don't want to answer that question because I
7 don't -- I'm not --

8 MR. ABREU: That's your, I believe it's your
9 Declaration --

10 THE COURT: Ask the next question.

11 MR. ABREU: Okay. You -- was CEL creditors -- did
12 US users got the same products available to them in terms of
13 CEL? Was there an incentive to purchase CEL as international
14 users?

15 MR. FERRARO: I'm sorry, I'm not following the
16 question. Was there an incentive --

17 MR. ABREU: Was there, was there an incentive for
18 US users to purchase CEL [indiscernible]

19 MR. FERRARO: My understanding is there's a tiered
20 reward system, loyalty system, in which if people hold CEL
21 they would be entitled to discounts in certain products, et
22 cetera. So if that's what you're referring to as an
23 incentive, I mean, that sounds reasonable.

24 MR. ABREU: I believe US users were not --

25 THE COURT: You're not testifying. If you have a

1 question, ask your question.

2 MR. ABREU: Judge, that's it. That's all I wanted.

3 THE COURT: Okay. Thank you. Anybody else have any
4 other questions?

5 MR. UBIERNA: Yes, Your Honor.

6 THE COURT: Mr. Ubierna.

7 MR. UBIERNA: Okay. Good morning, Ferraro. Before
8 you have talk about Emergence Incentive Plan [indiscernible]
9 are you aware that if the plan is approved, you are going to
10 receive a bonus or award?

11 MR. FERRARO: If certain targets are hit, yes,
12 that's the way it is written in the plan, yes.

13 MR. UBIERNA: What are your, your responsibilities
14 as Interim CEO?

15 MR. FERRARO: I'm sorry, I didn't hear that.

16 MR. UBIERNA: What are your, your responsibilities
17 as Interim CEO?

18 MR. FERRARO: Oh, thank you. Yeah, it's managing
19 the, the company through the bankruptcy process. Think
20 working with the legal and financial advisors, reporting
21 monthly operating reports to the Court. Obviously mining is
22 an operational business in which we've been deploying rigs,
23 we talked about hedging and managing that business, et
24 cetera. Those are the general qualifications. We've also
25 obviously had to reduce the workforce quite a bit, going

1 from, I think it was 950 plus in early 2022 to the 150 we
2 have today.

3 MR. UBIERNA: Would that responsibilities include
4 getting a plan confirmed?

5 MR. FERRARO: I think the goal is to get out of
6 bankruptcy. The, you know, the responsibility that I feel
7 personally that I have is to maximize value and do that as
8 fast as possible. But there are threshold and target dates
9 in which I hope we hit and we can return crypto to
10 customers. But, I mean, they're definitely in jeopardy.
11 These are pretty aggressive targets.

12 MR. UBIERNA: Are you familiar with the Emergence
13 Incentive Plan performance targets?

14 MR. FERRARO: Yes.

15 MR. UBIERNA: What was your involvement in
16 drafting the target performance for the work?

17 MR. FERRARO: This was, I think, the compensation
18 consultant from Alvarez & Marsal will come up and talk about
19 that in detail. My understanding is that these were drafted
20 and negotiated between Alvarez & Marsal and M3 on the UCC
21 side, and then approved by the Special Committee.

22 MR. UBIERNA: Okay. Are you aware that you are
23 getting a bonus if this Court approves the plan before the
24 end of October?

25 MR. FERRARO: That is one of the, that is one of

1 the metrics, yes.

2 MR. UBIERNA: Would you say that getting a plan
3 approved is already in your responsibilities and in your
4 salary?

5 MR. FERRARO: Getting a plan approved is the goal
6 of my work. Getting a plan approved by October 31st takes a
7 lot of weekends and nights.

8 MR. UBIERNA: Why should you get a bonus on top of
9 your salary for getting the plan confirmed?

10 MR. FERRARO: I'll give you an example. We spent a
11 tremendous amount of time, tens of hours in negotiating, me
12 and my executive team, in setting up these agreements with
13 the distribution partners. The rate and the speed at which
14 we're doing this is, to me, really impressive, and we're
15 trying to do it in order to hit those goals.

16 MR. UBIERNA: Okay. Nothing more, Your Honor.
17 Thank you.

18 THE COURT: Thank you very much, Mr. Ubierna.
19 Anybody else wish to cross-examine?

20 MR. SHEIK: Yes, Your Honor. I have some questions
21 that are just general questions, if I may.

22 THE COURT: Go ahead.

23 MR. SHEIK: Okay. And, all right, so my first
24 question. Was Simon Dixon ever officially or unofficially
25 brought in as a consultant or liaison to the Debtor during

1 the audit, and was there ever -- was he ever put under an
2 NDA for any other reason through the course of this
3 bankruptcy?

4 MR. FERRARO: My understanding is Simon was
5 involved in the bidding process with Bank to the Future and
6 there was an NDA related to that. He's, to me, been very
7 helpful in educating the community and being part of those
8 conversations. So I think there was an NDA on --

9 MR. SHEIK: Thank you. That's good to hear. Second
10 question. Was a formal process for the selection of the
11 Special Committee of the NewCo followed, can you describe
12 that process to us?

13 MR. COLODNY: Objection, Your Honor.

14 THE COURT: Overruled.

15 MR. SHEIK: Okay --

16 THE COURT: He can answer the question. I
17 overruled the objection.

18 MR. FERRARO: Yeah. So --

19 THE COURT: Go ahead, Mr. Ferraro, if you know the
20 answer, go ahead and answer.

21 MR. FERRARO: I'll do my best. I wasn't in the
22 driver seat on this, the Committee was on the driver seat of
23 this. As I mentioned earlier in my testimony, I did discuss
24 it with the co-chairs as well as the proposed CEO of
25 Fahrenheit. So that's kind of my level of knowledge. I, as I

1 said, I'm impressed with the people that they've selected.

2 I think there's a large amount of creditor support and
3 creditors on the Board and on the Board observer roles.

4 MR. SHEIK: Okay, great. And Mr. Ferraro, I
5 understand that you have a financial services background.
6 The reason why I'm asking you these questions is because,
7 you know, there's a specific process that is followed in
8 hiring or selecting of, you know, Board members, or any kind
9 of position in the financial services realm. And, and
10 especially when it comes to having fiduciary responsibility
11 or any financial oversight in, you know, in a manner such as
12 ours. And I'm an Earn creditor, by the way, just for
13 everybody to know.

14 But my question is, so when the process was rolled
15 out, you know, was there any specific job description or a
16 criteria of selection for, you know, these Board members to
17 be appointed to the select -- to the Board Committee?

18 MR. FERRARO: I don't -- with all respect, I don't
19 think I'm the right person to answer that question. I was
20 not involved in setting up the details of the selection.
21 I've had conversations around --

22 MR. SHEIK: Okay, okay, not a problem. So then,
23 I'll just ask you a very general question in that sense.
24 When it -- so in the financial services realm, would anyone
25 ever hire or appoint somebody in a position like this that

1 has -- well, first of all, there would be a credit report
2 check that would be done as part of the background check, if
3 I'm not mistaken.

4 MR. BROWN: Objection.

5 THE COURT: Sustained.

6 MR. SHEIK: Okay. Would anybody be appointed to
7 this position that has a negative financial -- like, let's
8 say owes back taxes, for a lien imposed by the federal
9 government over the last few years.

10 THE COURT: He did not select the Board.

11 MR. SHEIK: I understand. I was just asking
12 because of his financial services background, that's the
13 only reason.

14 THE COURT: Objection sustained.

15 MR. SHEIK: Okay.

16 THE COURT: Whoever has a phone in the courtroom
17 better shut it off. Go ahead, Mr. Sheik.

18 MR. SHEIK: Thank you. You know, my next question
19 -- and please feel free to object. Again, it was -- I just
20 wrote these down very quickly because I didn't know I was
21 going to be able to attend this. But we were told that there
22 was a special investigator that was hired to look at the
23 backgrounds of all these that were selected. Why was a
24 special investigator hired, instead of just doing a standard
25 background check?

1 MR. BROWN: Objection.

2 THE COURT: Sustained.

3 MR. SHEIK: Okay. Now, I'm going to skip ahead,
4 then. Okay, so, so when it came to the selection of the
5 Board and the observers, was it necessary to increase the
6 number of members from seven appointees on the Board to
7 nine? Given the true revenue streams for NewCo are A,
8 staking, which is pretty much set on autopilot. B, mining,
9 which no one other than USBTC, which is US Bitcoin, mining,
10 who has the subject matter expertise to add any value to
11 this process.

12 THE COURT: Mr. Sheik, I'm going to cut you off in
13 the middle of that question, because it clearly is not a
14 proper question. If you have more questions to ask, go
15 ahead.

16 MR. SHEIK: Okay, then. So, why was it necessary
17 to increase the number of members from seven to nine?

18 MR. FERRARO: I was not part of the selection
19 Committee, I --

20 THE COURT: Next question.

21 MR. SHEIK: Okay. Now, USBTC was the only company
22 that brings value to this process. And I believe USBTC -- I
23 mean, Fahrenheit allowed us to go directly to USBTC. So, as
24 part of their plan, they gave us an out. So, or, you know
25 if --

1 THE COURT: Mr. Sheik, Mr. Sheik, okay --

2 MR. SHEIK: Yes.

3 THE COURT: -- you're able to ask questions,
4 you're not testifying. So if you have questions you wish to
5 ask, I'm trying to give you some latitude. I understand
6 you're not a lawyer.

7 MR. SHEIK: Yes.

8 THE COURT: But you can't testify, okay? You can't
9 testify about facts that are not in the record.

10 MR. SHEIK: Sure, I understand. And thank you, and
11 be as harsh as possible, it only motivates me to do better
12 next time.

13 THE COURT: I'm not trying to be harsh.

14 MR. SHEIK: I appreciate.

15 THE COURT: Just try to follow the rules, okay?

16 MR. SHEIK: No, no, not at all. I'm just saying,
17 I'm just letting you know, you can. I appreciate it. Thank
18 you very much, Judge. Your Honor. Okay, so, so basically,
19 you know, if USBTC is the only party that adds value to this
20 process, why not go to USBTC directly?

21 MR. FERRARO: I, I --

22 MR. BROWN: Objection.

23 THE COURT: Sustained.

24 MR. SHEIK: Okay. Were you physically present
25 during the mediation between Earn and the Board members?

1 MR. FERRARO: No, I was in Ecuador at my, in my
2 home office working on the Celsius case. I was not at the
3 mediation.

4 MR. SHEIK: Did you -- so you did not attend,
5 whether by Zoom or, you know, electronically somehow?

6 THE COURT: Whatever was said in the mediation is
7 subject to mediation privilege, and I will not let you
8 inquire about -- he wasn't there, but whatever happened in
9 the mediation stays in the mediation.

10 MR. SHEIK: I understand, okay. Well, now that the
11 mediation was complete, I guess my last question is, you
12 know, you know, did this -- since I come from the Earn group
13 and, you know, I feel -- I just wanted to ask, did this
14 negotiation, according to you, between Earn and the Board
15 members, really help the Earn in the end, and do you think
16 that the mediation was necessary?

17 MR. BROWN: Objection.

18 THE COURT: Sustained.

19 MR. SHEIK: Those are all the questions I had,
20 Your Honor. Thank you very much.

21 THE COURT: Anybody else wish to cross-examine?

22 UNIDENTIFIED SPEAKER: Yes, Your Honor, I have one
23 additional set of questions.

24 THE COURT: You already had your chance. I'll only
25 hear anybody who hasn't questioned yet.

1 MR. PATTON: Your Honor, Jeff Patton, Pro Se
2 Creditor.

3 THE COURT: Go ahead, Mr. Patton.

4 MR. PATTON: Good morning, Mr. Ferraro.

5 MR. FERRARO: Good morning.

6 MR. PATTON: I understood you mentioned earlier
7 that you joined the company shortly before the pause and or
8 the bankruptcy filing.

9 UNIDENTIFIED SPEAKER: Great timing.

10 MR. FERRARO: Yeah.

11 MR. PATTON: Is that correct?

12 MR. FERRARO: Yes, that's correct. Both of you are
13 correct.

14 MR. PATTON: Okay, I just want to touch on a
15 couple things regarding the plan and the vote and the
16 ballot. The -- after the filing and prior to voting, the
17 creditors were divided into, into groups, we've heard there
18 was classes. Did you take part in that activity?

19 MR. FERRARO: It's, I think that's largely a legal
20 question, class definition. I understand the classes, I
21 understand the plan. But the actual -- your question is, I
22 think, more of a legal question.

23 MR. PATTON: Okay, so you didn't do any work or
24 participate in any meetings or discussions of how the
25 classes were determined?

1 MR. FERRARO: No, I think we had general
2 discussions in formulating the plan. And I think I have a
3 general understanding of how the classes were formed.

4 MR. PATTON: All right, thank you, thank you. Now
5 that activity in dividing creditors into classes, you
6 mentioned was taken on by legal teams prior to, prior to the
7 development of the plan itself, is that correct?

8 MR. FERRARO: I think they're kind of, in my
9 opinion, they're kind of aligned and organically done around
10 the same time, throughout the case. You know, you're always
11 thinking about kind of your creditors and their needs and
12 their contractual rights and all that throughout. And I
13 think that formulates a lot of this.

14 MR. PATTON: All right. Terrific. Do you happen to
15 have any opinion as far as the principle difference between
16 creditor classes versus the difference between creditor
17 classes four and five?

18 MR. BROWN: Objection.

19 THE COURT: Sustained.

20 MR. PATTON: Thank you. Sorry. In terms of the
21 ballot, under the plan, to your knowledge, was it possible
22 for a class five creditor to elect to take a lesser
23 distribution and join class four?

24 THE COURT: These are really legal questions, so I
25 really -- they're not proper subject for the examination of

1 this witness, Mr. Patton. Any other questions?

2 MR. PATTON: I, I have nothing. I would say
3 nothing further, but I have nothing. Thank you, Your Honor.

4 THE COURT: Thank you, Mr. Patton. Anybody else
5 wish to cross-examine? I have some questions.

6 THE CLERK: Judge, there is a Sharon Dow that
7 raised her hand.

8 THE COURT: Oh, I couldn't see it. So, who is
9 that, Deanna?

10 THE CLERK: Sharon Dow, last name is spelled
11 D-O-W.

12 THE COURT: Okay. Ms. Dow, go ahead if you wish to
13 ask questions.

14 MS. DOW: Yes, good day, Your Honor. Thank you
15 very much. I'm Sharon Dow, I am a creditor, and Earn
16 Creditor. I have a few questions for Mr. Ferraro around the
17 business plan that he's sponsoring, putting forward.

18 THE COURT: Yes, go ahead.

19 MS. DOW: Yeah, and the reference in exhibits
20 would be Exhibits 32 in the Mining Business Plan, and 35 in
21 the Disclosure Statement, Exhibit E.

22 THE COURT: We don't have the exhibits in front of
23 us, but go ahead and ask your questions. We'll see whether
24 the witness can answer.

25 MS. DOW: Yes, thank you. My questions are, are

1 more general. First of all, in any business plan in general,
2 the -- how do you determine -- how do you do a determination
3 of quality of revenue analysis?

4 MR. FERRARO: Well, you project the revenue. It's
5 a bottoms-up exercise. You do it by site. It's based upon --
6 I'm talking specifically mining here. It's based upon site
7 level. There's a full review of the power costs. We have a
8 model that kind of predicts the network size, so you can
9 calculate your kind of market share. So, it's -- and then
10 there's operational costs, there's profit shares, so the
11 revenue elements are all loaded and the expense elements are
12 all loaded and they're done at a site level.

13 MS. DOW: So, what are the key drivers in your
14 determination of the revenue going forward and its
15 reliability?

16 MR. FERRARO: What was the last part? And the true
17 liability?

18 MS. DOW: The revenues going forward and the
19 reliability of those revenues.

20 MR. FERRARO: Oh, okay, sorry. I mean, it's a
21 forecast, right? So it's uncertain. So you try to do your
22 best to take into account a reasonable view of the
23 marketplace. So we have a view of, kind of, Bitcoin price,
24 and as I mentioned before, network growth. That gives you a
25 good view of kind of how much computational power,

1 computational power you have versus the total universe of
2 Bitcoin miners, which effectively determines what your share
3 of the rewards awards will be, the block awards. So it's,
4 it's -- there's many different, as I would say in my old
5 job, there's many different kind of seeds to the forecast
6 that are all assumptions. And you do your best to come up,
7 come up with the right assumptions.

8 MS. DOW: And do you stand by the revenues and the
9 compute power hash rates in the plan that you've presented?

10 MR. FERRARO: Yeah, I think the deployment
11 schedules are generally reasonable. I think with the Core
12 Scientific settlement and the 250 megawatt site in West
13 Texas, I -- just one man's view, I believe NewCo will beat
14 those projections, holding constant the Bitcoin price in the
15 network. The vertical integration should drive wider through
16 the, through cycle spreads and decrease counterparty
17 reliance, which are both good things for the support of the
18 business.

19 MS. DOW: Mr. Ferraro, thank you for that.
20 Mr. Ferraro, do you happen to know the approximate current
21 hash rate?

22 MR. FERRARO: We have total miners equate to about
23 12, 12 exa hash. I think right in production right now it's
24 probably around 7 exa hash.

25 MS. DOW: And what is the current hash rate and

1 difficulty rating in the market?

2 MR. FERRARO: I don't know off the top of my head,
3 but I think we're around, somewhere around 3 percent of the
4 network.

5 MS. DOW: Okay.

6 MR. FERRARO: A little over 3 percent.

7 MS. DOW: Sure. And at what rate does hash rate
8 and difficulty escalate through a cycle?

9 MR. FERRARO: It depends on --

10 MS. DOW: Are you familiar with that?

11 MR. FERRARO: Yeah, it depends on many different
12 things. It's quite complex. I think hash rate will be
13 determined based upon Bitcoin price, energy prices and the
14 age of the machines and the efficiency of the machines. And
15 those are key components that go into the forecast.

16 MS. DOW: So one of the key line items in your
17 forecast is actually hash rate. It's down, Line 7 or 8. It -
18 - can you share with me what are the underlying assumptions
19 to the beginning point of that hash rate and how that grows
20 or adjusts over the five periods in your plan?

21 MR. FERRARO: Yeah, so we're starting from a point
22 where, you know, as of, as of the end of August we had
23 80,000, 85,000 miners deployed and hashing. As I mentioned,
24 you know, we are going through some counterparty
25 difficulties. So, you know, I actually expect that number to

1 potentially drop. But, with the Core Scientific settlement
2 and the site in West Texas, I think we're going to have a
3 plan to deploy -- NewCo has a plan to deploy 40 megawatts
4 worth of machines very rapidly, I think within 90 days of
5 that deal closing. We plan to work on that before the
6 effective date, just to make sure that NewCo has all -- as
7 many rigs deployed as possible.

8 And then within the forecast there's other
9 deployment assumptions that are largely done at similar
10 economics for existing hosting contracts.

11 MS. DOW: Yeah, understood. I actually would like
12 to explore where the assumptions on the productivity, hash
13 rate and share of global network, where those assumptions
14 lie versus current state of the business environment. So are
15 you aware of what the first period hash rate number is?
16 'Cause this, this is in your calculation that is a key
17 driver to the revenue and the number of Bitcoin.

18 MR. FERRARO: I've tried my best to -- sorry if
19 you were -- I didn't mean to cut you off.

20 MS. DOW: No, you're fine. Please, go ahead.

21 MR. FERRARO: Okay. I've tried my best to memorize
22 as much as I can. That's not one of them, I apologize. I
23 think it's -- off of memory, I believe our, our share of the
24 hash rate was trending flat to down-ish throughout the 5-
25 year projection. Off of memory, and I could be wrong.

1 MS. DOW: Okay, so let me help you a little bit.

2 THE COURT: Ms. Dow, I'm --

3 MS. DOW: I'm actually referring --

4 THE COURT: Ms. Dow, I'm going to stop you.

5 MS. DOW: -- I'm actually referring --

6 THE COURT: Ms. Dow, stop. I'm permitting you to
7 examine with respect to documents that you didn't post last
8 night for cross-examination. The witness is generally
9 familiar with it. I'm trying to provide some leeway. So
10 don't expect him to be able to pull numbers from a document
11 that you have not put in front of the witness for cross-
12 examination. Go ahead with your questions.

13 MS. DOW: Sure. May I try to state this way, and
14 this is my first time ever doing this. I apologize, Your
15 Honor. So, it appears to me in the chart that there is a
16 hash rate number of 307, sizing the entire Bitcoin network,
17 that your comparing this production to. So the 307 exa hash
18 per second, are you familiar with what that correlating
19 number in reality today is?

20 MR. FERRARO: I don't have it off the top --

21 MS. DOW: The size of the Bitcoin venture.

22 MR. FERRARO: I don't have it off the top of my
23 head, but the launch -- that change, it goes up and down.
24 You know, so it is a volatile kind of metric that you're
25 trying to compare to. But I think it's generally off -- I

1 think it was -- off of memory I have, like, a 270 in my mind
2 or something like that. So I think it's pretty consistent.

3 MS. DOW: Would it surprise you to know that it's
4 481 today and it's been in the 400s in the latter part of
5 the month of September? Would that surprise you?

6 MR. FERRARO: It's volatile, it moves up and down,
7 you know.

8 MS. DOW: Sure.

9 MR. FERRARO: The launch point, you can't -- with
10 this type of asset it's very hard to kind of true up the
11 launch point at all points, 'cause it moves so much.

12 MS. DOW: Sure. But, so a plan, would you say that
13 you're comfortable with a plan that states a starting year
14 period, end-of-period value, in, as being 30 percent lower
15 than what reality is? And so that kind of difficulty rating
16 -- so, so when hash rate is high, once --

17 THE COURT: Ms. Dow, you're saying what reality
18 is. Reality would be evidence. It's not before the witness,
19 it's an improper question.

20 MS. DOW: Okay. I'm sorry. So, if the plan -- if
21 in fact the plan is 30 percent off of what current
22 difficulty is, do you feel that there are enough resources
23 in the plan to make up the difference to maintain the
24 revenue you're projecting?

25 MR. FERRARO: Yeah, I think it's quite volatile,

1 the hash rate, it moves back and forth. I think the key
2 assumption is kind of what happens around [indiscernible]

3 MS. DOW: [indiscernible]

4 MR. FERRARO: Well, I mean, that's, that's
5 occurring in 2024, it's right around the corner, and that's
6 going to impact your 5-year projection. So --

7 MS. DOW: Sure. And how are you seeing that rate
8 to -- be impacted by having [indiscernible] and what does
9 that mean for resources needing to be applied by the, the
10 NewCo? To maintain revenue.

11 MR. FERRARO: As the rewards get cut in half, you
12 would expect people with less efficient rigs and maybe less
13 desirable power markets would have to shut off and curtail.
14 Now, this is why it's volatile. They can turn back on at any
15 point in time. If Bitcoin prices rise, energy prices fall,
16 or the network shrinks, these coins or the machines can be
17 turned right back on. And that's why it's so volatile and
18 elastic.

19 THE COURT: Let's wrap up the questions, Ms. Dow.

20 MS. DOW: Sure. Last cycle -- so you're talking
21 about the beginning of a new cycle we're coming into. Last
22 cycle, what was the range of hash rate? What was the, the
23 variance from the low to the high?

24 MR. FERRARO: I don't know that information, I
25 don't have it in front of me. I apologize.

1 MS. DOW: Okay. All right. So you're not -- are
2 you familiar with it went from 100 to 400, does that seem
3 similar to the assumptions that drove into your plan?

4 THE COURT: I'm going to object to that and
5 sustain the objection. Wrap up your questioning, please.

6 MS. DOW: How did you anticipate remaining
7 profitable if, by chance, the plan starting point is
8 significantly off to the low side from what it really takes
9 to mine in this current competitive environment?

10 MR. FERRARO: Yeah, it's a great question. Thank
11 you for that. I think it's important to note that this
12 business has a lot of intrinsic defensive capabilities. So
13 you talk about profitability and you talk about losses. The
14 ability to curtail, to economically curtail when the
15 marginal cost is higher than marginal revenue is something
16 that is decided on a minute-by-minute basis. I think it's 5-
17 minute intervals. This greatly reduces the risk of loss if
18 managed appropriately.

19 So I think, you know, it comes down to having a
20 lean operational kind of shop, in which you're going to eat
21 some operational expenses when your machines are shut off,
22 but it's important to note that you do have that natural
23 kind of defensive mechanism in this business.

24 THE COURT: Last question, Ms. Dow.

25 MS. DOW: So can I --

1 THE COURT: Ms. Dow --

2 MS. DOW: Sure.

3 THE COURT: -- one, one more question.

4 MS. DOW: Yes, so to, to follow up on that,
5 Mr. Ferraro, that curtailment strategy, how often has it,
6 and do you see the curtailment which impacts your variable
7 cost, how do -- how often do you see that covering and
8 making up for, and covering the fixed cost portion in the
9 operation?

10 MR. FERRARO: Yes, great question. We experience
11 this quite a bit in West Texas over the summer. The heat
12 index was off the charts, the power spikes were dramatic.
13 And because of that, we economic curtailed a significant
14 portion of the time. And that's one of the driving reasons
15 why the EBITDA was so high over the summer months, almost
16 \$10 million.

17 THE COURT: All right. Anybody else wish to cross-
18 examine?

19 MS. DOW: Thank you, Your Honor.

20 THE CLERK: I don't see any hands, Judge.

21 THE COURT: All right. I have a few questions for
22 Mr. Ferraro. So I'm looking at Exhibit 37, which was your
23 Declaration in Support of CEL Token Settlement. And among
24 the things attached to it was what's described as Exhibit A,
25 the White Paper. Just tell me what that was and why it was

1 prepared.

2 MR. FERRARO: Yeah, I'll do my best. I think the
3 White Paper was prepared right before the ICO, which I think
4 was around circa 2018. And this White Paper effectively
5 describes how the CEL Token will be issued, what its value
6 and contributions are, and kind of, you know, you know, the
7 utility components of it.

8 THE COURT: All right, so your, your Declaration
9 and the Disclosure Statement describe this as the CEL as a
10 utility token. Can you explain what that means, as a utility
11 token?

12 MR. FERRARO: Yeah, you can -- I think there's
13 three key components to it. Let's see if I can remember all
14 three after a couple hours of testimony. One is kind of --

15 THE COURT: Time to finish this up.

16 MR. FERRARO: I know. Discounted loan rates, you
17 can pay your loan with it. The other one is enhanced --

18 THE COURT: Higher interest rate on deposits.

19 MR. FERRARO: Higher on, on deposits and the third
20 piece was --

21 THE COURT: Lower interest rate on loans.

22 MR. FERRARO: Lower interest rates, and the third
23 piece is product and services.

24 THE COURT: Reduced transaction fees.

25 MR. FERRARO: Yep.

1 THE COURT: Could the CEL Token be used to pay for
2 goods or services within the Celsius network ecosystem?

3 MR. FERRARO: You could trade it in for other
4 currencies, and you could pay that --

5 THE COURT: Through the Celsius Network.

6 MR. FERRARO: Through the Celsius Network.

7 THE COURT: So the platform shut down, and the
8 plan doesn't resume it, correct?

9 MR. FERRARO: That's correct.

10 THE COURT: All right. So do utility tokens have
11 any value if the platform on which they're used ceases to
12 function?

13 MR. FERRARO: I personally do not believe so,
14 outside of being speculative meme coin.

15 THE COURT: So whenever market trading, you would
16 consider that to mean speculative trading.

17 MR. FERRARO: That's what I - yes. Correct.

18 THE COURT: Perhaps subject to the manipulation
19 that happened before between around the pause date.

20 MR. FERRARO: And the disconnects in the
21 marketplace, and all the locked tokens, yes.

22 THE COURT: I don't have any other questions. Do
23 you have any more? You know what, we're going to take a
24 break, but we will finish with the witness.

25 MR. BROWN: Nothing further, no, Your Honor.

1 THE COURT: Committee?

2 MR. COLODNY: I have one, Your Honor. Mr. Ferraro,
3 you answered a number of questions about exculpation
4 regarding the distributions. Is it your understanding that
5 the exculpations in the plan only apply to the
6 distributions?

7 MR. FERRARO: My understanding is the exculpations
8 for the distribution part -- are you asking specifically --

9 MR. COLODNY: No, the exculpation as a whole for
10 the Debtors, for the Committee, for the Committee Advisors.

11 MR. FERRARO: It's broader than just the
12 distribution, correct.

13 MR. COLODNY: It covers all actions between the
14 petition date to the effective date.

15 MR. FERRARO: Throughout the bankruptcy, yes.

16 MR. COLODNY: No further questions, your Honor.

17 THE COURT: Thank you. Ms. Cornell?

18 MS. CORNELL: Nothing further, Your Honor.

19 THE COURT: You're excused.

20 MR. FERRARO: Thank you.

21 THE COURT: Thank you for your testimony. What's
22 next?

23 MR. BROWN: Your Honor, we're next going to call
24 Mr. Kokinos to the stand. Maybe probably a good time for
25 morning break.

1 THE COURT: It is.

2 MR. BROWN: We can --

3 THE COURT: It is.

4 MR. BROWN: -- shift around if necessary.

5 THE COURT: Sure. Let's take a break until noon.

6 And do you have an idea about how long you're going to be
7 with Mr. Kokinos?

8 MR. BROWN: I'll defer to Mr. McCarrick.

9 MR. MCCARRICK: T.J. McCarrick, Kirkland & Ellis,
10 on behalf of the Debtors. I don't expect at least the direct
11 examination to go more than 10 minutes.

12 THE COURT: Okay. All right, let's take a break
13 until noon and we'll resume at noon. Thank you very much,
14 everyone. Please be seated.

15 MR. MCCARRICK: T.J. McCarrick, Kirkland & Ellis,
16 on behalf of the Debtors. We call Steven Kokinos to the
17 stand.

18 THE COURT: Okay.

19 MR. MCCARRICK: And, Your Honor, like my partner,
20 I have some witness binders that I can hand up to the bench,
21 the witness and the clerks in turn.

22 THE CLERK: Do you solemnly swear and affirm all
23 the testimony you're about to give before this Court is the
24 truth and the whole truth?

25 MR. KOKINOS: I do.

1 THE COURT: Thank you. Please have a seat. And
2 there are cups and there is water there, if you --

3 MR. KOKINOS: Thank you.

4 THE COURT: Please go ahead.

5 MR. MCCARRICK: Good afternoon, Mr. Kokinos. Could
6 you introduce yourself?

7 MR. KOKINOS: I'm Steven Kokinos, and I'm the
8 proposed CEO of NewCo.

9 MR. MCCARRICK: What do you do for a living,
10 Mr. Kokinos?

11 MR. KOKINOS: I'm a tech investor. But I's say
12 principally I've spent the majority of my life building tech
13 companies, starting with internet infrastructure, software,
14 telecommunications and crypto most recently.

15 MR. MCCARRICK: How did you become involved in
16 these Chapter 11 cases?

17 MR. KOKINOS: I was introduced to Celsius by Mike
18 Arrington, who runs Arrington Capital. He's one of the
19 Fahrenheit principals and he brought a group of us together
20 to take a look at the opportunity.

21 MR. MCCARRICK: When you say 'Fahrenheit,' what is
22 the Fahrenheit Group?

23 MR. KOKINOS: Fahrenheit Group is a team of five
24 principals, a US Bitcoin Proof Group, or US Bitcoin of which
25 Asher Genoot is a founder and involved personally here.

1 Proof Group, which is run by Noah Jessop, is a staking
2 service, or staking service provider and venture capitol.
3 Ravi Kaza, who is a risk management expert and has a lot of
4 experience in both managing both public and private hedge
5 funds, along with myself.

6 MR. MCCARRICK: And is Arrington the fifth?

7 MR. KOKINOS: I'm sorry, yes. I'm sorry. And last
8 but not least, Arrington Capital, which is founded and run
9 by Mike Arrington, is a longtime investor in the tech space
10 and crypto space.

11 MR. MCCARRICK: Mr. Kokinos, are you generally
12 familiar with the sales and auction process for the Debtors'
13 assets?

14 MR. KOKINOS: Yes, I am.

15 MR. MCCARRICK: How would you describe that
16 process based on your participation in it?

17 MR. KOKINOS: Well, it was a very competitive
18 process. It went much longer than we anticipated it might.
19 You know, but I think from our standpoint, you know, it
20 yielded, you know, a much better deal for the creditors
21 than, than the stalking horse bid was, certainly.

22 MR. MCCARRICK: What is Fahrenheit's role in
23 restructuring the Debtors today?

24 MR. KOKINOS: Fahrenheit will be the manager of
25 the new entity and providing, you know, much of the

1 executive team. And is also in particular responsible for
2 managing the three core business lines. One being Bitcoin
3 mining, the second being staking, especially self-staking
4 Ethereum, and the third is managing a portfolio of illiquid
5 venture investments and other assets.

6 MR. MCCARRICK: You refer to the management team
7 of NewCo. Who is that management team or the anticipated
8 management team?

9 MR. KOKINOS: Today the confirmed members of
10 Fahrenheit that will be involved in NewCo full time are
11 myself as CEO, Joel Block, who's in the audience, will be
12 the CFO, and then Ravi Kaza will be on the Board as well as
13 Asher Genoot. And US Bitcoin as a firm will also be
14 responsible for managing Bitcoin mining and has a separate
15 management agreement specific to those services they'll be
16 providing.

17 MR. MCCARRICK: Is Fahrenheit committed to making
18 any investments in NewCo?

19 MR. KOKINOS: Yes, the Fahrenheit members have
20 committed up to \$50 million of our own money to go into
21 NewCo and purchasing that at net asset value at the time of
22 emergence.

23 MR. MCCARRICK: What, if anything, does that
24 investment say about Fahrenheit's incentives to make NewCo
25 successful on a going-forward basis?

1 MR. KOKINOS: You know, we think that us owning
2 equity is important because it -- the creditors will be the
3 majority owners of this new business. And it incents us in
4 the same way that the creditors are incented, i.e., the
5 lines are incentives to grow the business and grow
6 enterprise value.

7 THE COURT: You said that Fahrenheit will invest
8 up to 50 million. How and when will the precise amount be
9 determined?

10 MR. KOKINOS: So approximately 30 million will go
11 in at emergence, and then the Board will have two one-year
12 options in year four and year five to extend the deal.
13 Should they choose to, approximately another 10 million is
14 committed to be invested in those years, should they elect
15 to continue the agreement. If they terminate the agreement
16 at the end of three years, then those additional investments
17 wouldn't happen.

18 MR. MCCARRICK: You testified earlier about
19 NewCo's primary business lines. Could you remind the Court
20 what those are?

21 MR. KOKINOS: Yes, I think I mentioned a little
22 bit earlier, but just to reiterate. Bitcoin mining will be
23 the largest business line at emergence. The second is
24 Ethereum staking, and obviously we'll need the Board to
25 approve the business plan, but we think that we're likely to

1 want to stake a portion of the Ethereum, so that we can earn
2 yield. One of the points I think that's important on the
3 Ethereum side is that Proof Group is contributing
4 intellectual property into NewCo that will enhance the
5 ability to get -- obtain higher yields on Ethereum staking
6 than would be possible by someone doing it themselves. So
7 that, we think, is a key, a key point.

8 And then the third, you know, there are many
9 different kind of illiquid assets that are on the balance
10 sheet. The Arrington team in particular is very skilled at
11 managing those and looking at ways to both get them
12 ultimately liquid, but also be able to, you know, manage the
13 value of those assets.

14 THE COURT: What's the approximate value of
15 Ethereum that's being seeded into NewCo?

16 MR. KOKINOS: So it's approximately 450 million
17 with one modifier. I know the Cedarvale deal is being
18 discussed here. If the Cedarvale deal does happen, then I
19 believe it would be reduced to approximately 420 million.

20 MR. MCCARRICK: Turning to the mining business
21 which you were just discussing a little bit, what steps is
22 Fahrenheit taking to set the NewCo mining business up for
23 success, or what's the business case for mining on a go-
24 forward basis?

25 MR. KOKINOS: Sure. I mean, I think this is an

1 important one. I think one of the things that excites us
2 about US Bitcoin as a partner is that, you know, their focus
3 has really been on vertical integration. Owning property,
4 being able to build that infrastructure, that we -- that
5 NewCo will ultimately own, and then enable us to be more
6 efficient than, you know, others in a competitive situation.
7 Which mining is. And so if you look at, you know, whether
8 it's a property like Cedarvale or potentially other
9 opportunities, should the Board, you know, be open to
10 further investments, we think that US Bitcoin is
11 particularly well situated to help us both build out those -
12 - that new infrastructure, but also manage it in a very
13 efficient way. And I think our belief is that moving away
14 from third-party hosted contracts as quickly as possible
15 will yield economic benefit to NewCo.

16 MR. MCCARRICK: All right, Mr. Kokinos, can you
17 open the binder in front of you at Celsius Exhibit 61.

18 MR. KOKINOS: Exhibit 61

19 THE COURT: Is it his Declaration?

20 MR. KOKINOS: Yes.

21 MR. MCCARRICK: Yes. Celsius Exhibit 61 is a copy
22 of Mr. Kokinos' Declaration, which is filed at Docket Number
23 3591. Is that a true and accurate copy of your Declaration,
24 sir?

25 MR. KOKINOS: yes, it is.

1 MR. MCCARRICK: Do you adopt the statements in
2 your Declaration as your testimony under oath here today?

3 MR. KOKINOS: I do.

4 MR. MCCARRICK: All right, this next exhibit I'd
5 like to -- the Debtors offer Exhibit Celsius Exhibit 61 into
6 evidence.

7 THE COURT: Any objections? Exhibit 61 is admitted
8 into evidence.

9 (Debtors' Exhibit 61 Received into Evidence)

10 MR. MCCARRICK: All right, I'd like to now turn to
11 Exhibit 3 in your binder.

12 MR. KOKINOS: Okay.

13 MR. MCCARRICK: Celsius Exhibit 3 is the Debtors'
14 Disclosure Statement filed at Docket 2902.

15 MR. KOKINOS: Okay.

16 MR. MCCARRICK: And this is an excerpt of that
17 Disclosure Statement, Pages 296 to 324 of the Disclosure
18 Stmt. What are Pages 296 to 394 of Celsius Exhibit 3?

19 MR. KOKINOS: I just wanna make sure --

20 THE COURT: The copy says to 332.

21 MR. MCCARRICK: 332.

22 MR. KOKINOS: I have Page 301 to 332, is what it
23 shows on mine, is that right?

24 THE COURT: I have 296 to 332.

25 MR. MCCARRICK: One second.

1 MR. KOKINOS: Oh, I apologize. There we are. You
2 guys are right, I missed the cover pages. 296 to 332, yes.

3 MR. MCCARRICK: 296 to 332?

4 MR. KOKINOS: You got it.

5 MR. MCCARRICK: Okay. What are Pages 296 to 332 of
6 Celsius Exhibit 3?

7 MR. KOKINOS: This is a presentation that we
8 provided outlining some of the highlights of Fahrenheit's
9 approach to NewCo.

10 MR. MCCARRICK: Is it a fair description and
11 summary of the highlights of Fahrenheit's approach?

12 MR. KOKINOS: Yes.

13 MR. MCCARRICK: And do you stand by --

14 MR. KOKINOS: Yes.

15 MR. MCCARRICK: -- that business plan?

16 MR. KOKINOS: Yeah, we do.

17 MR. MCCARRICK: Your Honor, at this time we admit
18 that excerpt of Exhibit 3 into evidence.

19 THE COURT: Any objections to the Court admitting
20 in evidence Celsius Exhibit 3? All right, it's admitted into
21 evidence.

22 (Celsius Exhibit 3 Received into Evidence)

23 MR. MCCARRICK: Okay. Your Honor, I have nothing
24 further for this witness, happy to pass.

25 THE COURT: Thank you. All right, cross-

1 examination. First does Committee wish to examine?

2 MR. COLODNY: No.

3 THE COURT: US Trustee?

4 MS. CORNELL: Just one question, Your Honor.

5 THE COURT: Go ahead, Ms. Cornell.

6 MS. CORNELL: Good morning, Your Honor.

7 THE COURT: I've rarely heard somebody say they
8 only have one question and then stick by it.

9 MS. CORNELL: I only have one, I swear it, one.

10 MR. KOKINOS: Morning.

11 MS. CORNELL: Shara Cornell, I'm here for the
12 Office of the United States Trustee. I just wanted to ask
13 one clarifying question from your testimony earlier. You
14 indicated that a \$30 million, \$30 million would be paid into
15 NewCo upon emergence. Could you just explain a little bit
16 better for the record what emergence means to you?

17 MR. KOKINOS: Sure. You know, I guess upon the
18 plan effective date is what I should've chosen for words.

19 MS. CORNELL: Thank you. That's all I have, Your
20 Honor.

21 THE COURT: Congratulations. All right. Any other
22 cross-examination of Mr. Kokinos?

23 MR. DIXON: Yes, Your Honor.

24 THE COURT: Mr. Dixon, I see you on the screen.
25 You wish to examine?

1 MR. DIXON: Yes, hello, hello, Mr. Kokinos.

2 MR. KOKINOS: [indiscernible]

3 MR. DIXON: How are you doing. If you've -- I
4 didn't see in the Disclosure Statement any disclosure on who
5 the ultimate beneficial owners of Fahrenheit are. Would you
6 mind sharing the relative UBOs for Fahrenheit?

7 MR. KOKINOS: Of who the ultimate beneficial
8 owners of Fahrenheit are?

9 MR. DIXON: Yeah, and, like, the relative
10 percentages, and, like, the makeup of the shareholding.

11 MR. KOKINOS: Sure. The five partners that I --
12 five principals that I mentioned before are the beneficial
13 owners. Arrington Capital, US Bitcoin, or I believe it's a
14 designee from US Bitcoin, Sonic Boom Capital, which is my
15 family office, Ravi Kaza in his individual capacity in Proof
16 Group.

17 MR. DIXON: And are they --

18 THE COURT: Excuse me. He also asked about the
19 relative percentage of each -- ownership of each of those
20 five.

21 MR. KOKINOS: Yeah, I don't know the exact
22 percentages, but US Bitcoin and Arrington Capital are
23 larger, the two larger investors. And then the other three
24 are somewhat smaller.

25 MR. DIXON: Excellent. And could you help us --

1 could you tell us what the source of funds are for the 30
2 million, where are the funds coming from?

3 MR. KOKINOS: Sure. Well, you know, I can't speak
4 for the others, I can speak for myself. It's coming from,
5 you know, personal family money that's going in. But it is
6 our money and for the other investors it's, you know, funds
7 coming from their funds or themselves.

8 MR. DIXON: Okay. So this is an external capital
9 from [indiscernible] or is it all just the principals?

10 MR. KOKINOS: I don't, you know, I'm not aware of
11 what the specifics of how Proof Group is investing. You
12 know, so I can only speak for myself. The others are
13 investing through their funds.

14 MR. DIXON: Okay. And then, do we know the breakup
15 of, like, the 33 million, like, relative? Is it, is, like,
16 the larger percentage coming from US Bitcoin or Michael
17 Arrington?

18 MR. KOKINOS: Yeah, I believe I already answered
19 that.

20 THE COURT: Answer it again.

21 MR. KOKINOS: Okay. US Bitcoin and Arrington
22 Capital are the largest investors of the group, and the
23 remaining three are somewhat smaller. But it's not the case
24 that if there's any, you know, disproportionate.

25 MR. DIXON: Okay. Do you -- are you aware of

1 anything that would prevent NewCo being able to invest in
2 Fahrenheit if it ever wanted additional capital so that
3 NewCo and Fahrenheit could align interests, given it's going
4 to be the manager?

5 MR. KOKINOS: I'm not sure I really -- maybe you
6 could restate. I don't completely understand what you're --

7 MR. DIXON: Yeah, sure. Because, you know,
8 Fahrenheit is going to be the beneficial of most of the
9 management contracts, are you aware of anything, like, where
10 NewCo might be able to invest in Fahrenheit, to become an
11 equity holder in Fahrenheit so that they would have complete
12 alignment of interests?

13 THE COURT: Let me ask this question. Are there
14 any restrictions on NewCo investing in Fahrenheit?

15 MR. KOKINOS: Not that I'm aware.

16 THE COURT: Okay, ask your next question.

17 MR. DIXON: That's all. Thank you, Your Honor.
18 Thank you, Mr. Kokinos.

19 THE COURT: All right, anybody else wish to cross-
20 examine?

21 MR. SHEIK: Yes, Your Honor.

22 THE COURT: Mr. Sheik, go ahead.

23 MR. SHEIK: Okay. So, Mr. Kokinos, I wanted to
24 ask, was there a reason why you guys decided to increase the
25 number of Board Committee members from seven to nine?

1 MR. KOKINOS: Well, we -- this wasn't a decision
2 that we made. We had discussions with the Committee just to
3 --

4 THE COURT: With the Creditors Committee?

5 MR. KOKINOS: With the Creditors Committee around
6 Board composition. The original Board composition was a
7 seven-person board, of which we would have two seats and
8 consent rights over two additional seats. The Committee
9 approached us about the possibility of increasing the Board
10 size from seven to nine, where we would get three seats and
11 maintain consent rights over two of the seats as we had had
12 previously. We didn't have any objection to that, and so,
13 you know, that's where that went.

14 MR. SHEIK: Is it correct that during the two
15 Spaces that you guys held via Zoom and on Twitter Spaces,
16 with the creditors, you had mentioned -- well, not
17 specifically you, but, you know, Fahrenheit had mentioned
18 that there would be -- that the creditors would be able to
19 sit on this Board and have maximum representation. Is that
20 correct?

21 MR. KOKINOS: I don't have the recording of that,
22 but my recollection is somewhat different. I believe what we
23 -- my recollection was from Spaces, was that the creditors
24 would be the majority shareholders of this new business, and
25 would also have the majority of seats on the Board. And as a

1 result, would have, you know, by nature, you know, a control
2 position over what goes on in the new company?

3 MR. SHIEK: So then, if that is the case, then
4 why would there be a change in courts with, you know, an
5 increase from seven to nine and zero representation of
6 committee members to the board other than having observer
7 spots. That was a bit of a surprise to us.

8 MR. KOKINOS: I wasn't, so first of all, you
9 know, the selection of the board wasn't our, you know, we
10 were not the ones constructing the board. It was the
11 committee so I think it's worth being clear there. And to
12 our, you know, to my knowledge there are two UCC members who
13 are on the board and that there also board observers that
14 are creditors as well.

15 MR. SHIEK: Okay. And when it came to the
16 selection of notable, you know, members of this committee,
17 Emanuel Idu [ph] and Ms. La Palma [ph], I believe that's her
18 last name. Was that a decision that was made by Fahrenheit?

19 MR. KOKINOS: As, you know, I stated previously,
20 the committee as the right to select their board members. We
21 had consent rights over two of those seats. Irrespective of
22 that, the committee presented the names of their candidates
23 to us, Fahrenheit members both spoke with them and reviewed
24 their backgrounds and CVs. And we had no objections to the
25 members who were chosen to the board.

1 MR. SHIEK: So there was not a selection by
2 Fahrenheit?

3 MR. KOKINOS: No.

4 MR. SHIEK: Okay.

5 MR. KOKINOS: Other than --

6 MR. SHIEK: Who were the two selected by --

7 THE COURT: Hold on. Hold on.

8 MR. SHIEK: Sorry, go ahead.

9 MR. KOKINOS: I was just going to say --

10 THE COURT: Go ahead.

11 MR. KOKINOS: -- to be perfectly clear, other
12 than to the extent that for the two seats that we had
13 consent rights to, but we did not object to those seats.

14 THE COURT: Go ahead, Mr. Shiek.

15 MR. SHIEK: Thank you. So when it came to the
16 selection, the last minute change of, let's say, Mr.
17 Arrington bowing out of the selection committee, I'm sorry,
18 the board, was there a reason why that, you know, that
19 change was made in the last minute?

20 MR. KOKINOS: Mike Arrington had, you know,
21 personal thoughts on the composition of the board.
22 Fahrenheit, as a group, is comfortable with the composition
23 of the board and board observers and felt, you know, it was
24 best to appoint Robbie as a new board member as Mr.
25 Arrington wasn't comfortable.

1 MR. SHIEK: Okay. Now when it comes to the
2 composition of the board, I had asked a previous question to
3 Mr. Ferraro, which I'll ask you as well. When it comes to
4 the true revenue streams which are basically the mining
5 company and the staked Eth, I believe Mr. Asher Genoot has
6 been brought onto the board as the representative from
7 USBTC, is that correct?

8 MR. KOKINOS: Yes, that's right. Asher will be
9 one of the board members.

10 MR. SHIEK: Great. Now Asher is currently in a
11 position where he is both, or at least in three positions,
12 he's the CEO of US Bitcoin, he's the CEO of Hut 8, he's also
13 in the middle of a merger, and he's also responsible for
14 managing this mining company for NewCo. Do you think that
15 that is a bit of a large undertaking as in he may be spread
16 a little too thin?

17 THE COURT: Mr. Shiek --

18 MR. KOKINOS: [indiscernible]

19 THE COURT: Hold on. Mr. Shiek included various
20 assumptions that are in evidence before the court. Do you
21 know those to be true?

22 MR. KOKINOS: No.

23 MR. SHIEK: Yes, Your Honor, I do.

24 THE COURT: I'm sorry, your --

25 MR. SHIEK: Oh, I'm sorry.

1 THE COURT: -- your objection is sustained to
2 your question.

3 MR. SHIEK: Okay, no worries. Thank you. I'll
4 proceed then. So when it comes to, you know, the makeup of
5 this board, it seems like NewCo is largely, well this plan
6 sponsor will largely be, you know, responsible for
7 overseeing the mining company since staked Eth is kind of
8 set to autopilot. So why add more members to the board when,
9 you know, the bulk of the responsibility will lie on USBTC
10 and Asher Genoot as CEO.

11 UNIDENTIFIED SPEAKER #1: Objection.

12 THE COURT: Objection sustained.

13 MR. SHIEK: Okay. Your Honor, I think that's
14 all I have.

15 THE COURT: All right. Thank you --

16 MR. SHIEK: I appreciate it, thank you.

17

18 THE COURT: Thank you very much, Mr. Shiek.
19 Anybody else have any questions?

20 MR. PHILLIPS: Yes, Your Honor.

21 THE COURT: Mr. Phillips?

22 MR. PHILLIPS: Thank you, Your Honor. Mr. Kokinos,
23 I wanted to go back to the issue of Fahrenheit's overall
24 investment in NewCo. What the portion of the 50 and of the
25 33 million are you responsible for?

1 MR. KOKINOS: Approximately 6 million.

2 MR. PHILLIPS: Thank you. Is that of the 50 or of
3 the 33?

4 MR. KOKINOS: I honestly, I can't recall right
5 now because the numbers have moved around. But I believe out
6 of the 30.

7 MR. PHILLIPS: You think of the 33? I'm sorry, I
8 didn't hear.

9 MR. KOKINOS: Yeah, I believe of the 33.

10 MR. PHILLIPS: Can you help us understand why that
11 being upfront was reduced from 50 million to 33 as opposed
12 to, you know, structuring it maybe with all 50 up front and
13 then giving back the 33 if you exit off [indiscernible]?

14 MR. KOKINOS: Our understanding coming out of the
15 option was that there was a five year deal and that that's
16 what we were contributing into. You know, subsequent
17 discussions that were productive with the committee and the
18 debtors suggested that the committee would like to have, to
19 turn years four and five into their option rather than a
20 commitment to have us manage the company for those five
21 years. And pursuant to those discussions we arrived at a
22 different formula.

23 MR. PHILLIPS: And why, do you think that the
24 structure using a termination fee as opposed to an increase
25 fee for the additional year would have been beneficial to

1 the NewCo shareholder?

2 MR. KOKINOS: This was all of the structure that
3 all the parties felt comfortable with and agreed to.

4 MR. PHILLIPS: Okay. All right. In your
5 declaration, in paragraph 14, you talk about the NewCo
6 mining [indiscernible] and Exhibit E to the disclosure
7 statement, so that Exhibit E to the disclosure statement,
8 which I believe are incorporated into three of the debtors.
9 And I also, Your Honor, did submit some exhibits for cross
10 exam which, albeit, past the 5:00 p.m. deadline because,
11 like that caught me by surprise yesterday. But if I could
12 refer you to --

13 MR. KOKINOS: I'm not sure which exhibit or page
14 you're looking at.

15 THE COURT: If you'll hold on Mr. Phillips --

16 MR. PHILLIPS: Well --

17 THE COURT: -- Mr. McCarrick is going to bring
18 him the position exhibits. Okay? Just hold on.

19 MR. PHILLIPS: Sure. I'd like to start with
20 Exhibit E if that's possible.

21 MR. MCCARRICK: Mr. Phillips, for the record, are
22 these the excerpts that you submitted on the docket last
23 night? That's the filing that I gave him.

24 MR. PHILLIPS: Yes, they are. I believe that
25 they're also contained, Mr. McCarrick, within your exhibits

1 as well.

2 MR. KOKINOS: So this is from Exhibit E of
3 disclosure statement and there's a chart, that's what you're
4 looking at?

5 MR. PHILLIPS: Correct.

6 MR. KOKINOS: Okay.

7 MR. PHILLIPS: That is the one I'd like to start
8 with. Thank you.

9 Mr. MCCARRICK: [indiscernible]

10 MR. KOKINOS: Thank you.

11 THE COURT: What's the question?

12 MR. PHILLIPS: Okay, so are you responsible or is
13 the Fahrenheit team responsible for this exhibit?

14 THE COURT: You're referring to Exhibit E of
15 the disclosure statement?

16 MR. PHILLIPS: Correct.

17 MR. KOKINOS: I believe, I just need to
18 understand where this chart came from. Is this the debtors'
19 financial projections in the disclosure statements? Okay. So
20 what I would say is no, we were not responsible for these.
21 However, Fahrenheit did provide input into certain aspects
22 of this principally around the network hash rate assumptions
23 and BTC price over time.

24 MR. PHILLIPS: Okay, so let's focus on those two
25 elements. So you said Fahrenheit did provide input into the

1 network hash rate, again, which starts at 307, September
2 '24. Correct?

3 MR. KOKINOS: Mm-hmm.

4 THE COURT: You have to answer yes or no.

5 MR. KOKINOS: I'm sorry, yes.

6 MR. PHILLIPS: Do you know what the actual hash
7 rate in September of 2024 was?

8 MR. KOKINOS: I know what the hash rate is today,
9 I do not know what it was in September '24.

10 MR. PHILLIPS: What is it today?

11 MR. KOKINOS: Approximately 480.

12 MR. PHILLIPS: Okay, so if the hash rate is
13 approximately 480, which if I look here is not going to
th

14 exceed again until September 26 , what does that imply as to
15 the profitability and cash flow you've dealt with netcap,
16 CapEx that are shown on this chart?

17 MR. KOKINOS: Well, first of all, I don't have
18 the details of this financial projection so it's hard for me
19 to speculate on, you know, what that would, you know, how it
20 would change the numbers. I think it's impossible for me to
21 say in isolation, you know, what impact that would have
22 without, you know, having a spreadsheet and deeper data
23 here. And I wasn't a party --

24 MR. PHILLIPS: Would it be --

25 THE COURT: [indiscernible]

1 MR. KOKINOS: -- to the calculation.

2 MR. PHILLIPS: Would it be fair to say that the
3 network share would drop from three and a half to a lower
4 number more in accordance to about, you know, two and a
5 half?

6 MR. KOKINOS: I mean, I think it is a fair
7 assumption that if your hash rate, if the network hash rate
8 is going up then, you know, you would have a smaller share
9 of it. I agree. I think in reality it's likely not that
10 simple, which is why, you know, I would need to defer to
11 look at these. And again, I would just say that the specific
12 calculations here were done by the debtor. We gave input as
13 to the reasonableness on, you know, certain aspects here
14 which, you know, we felt were reasonable at the time and
15 stand by, you know, that. Obviously, you know, Bitcoin is a
16 volatile asset and network hash rates are a volatile thing
17 as well so they go up and they go down.

18 MR. PHILLIPS: So you think that now that hash
19 rates are 60 percent higher, in actuality than has been
20 illustrated on this chart, that this number is still
21 feasible?

22 MR. KOKINOS: What was in my testimony --

23 MR. PHILLIPS: [indiscernible]

24 MR. KOKINOS: -- and what I am reiterating here,
25 is that, you know, the numbers as presented with the

1 information that we had at the time, was reasonable and we
2 stand behind that.

3 MR. PHILLIPS: And you agree that if the network
4 hash rate is substantially higher than was illustrated here,
5 the profitability would be lower? Not saying a particular
6 number but that it would actually be lower for sure.

7 MR. KOKINOS: I'm not sure I agree with that part
8 of your statement. I think we, you know, as all things in
9 business and forecasting, you know, you have to look at the
10 totality of it. I don't have the levers in front of me to
11 understand, you know, how that might change or what other
12 decisions might go along with, you know, changes in a
13 dynamic environment. I think that's part of capital
14 allocation and risk management and those are the sorts of
15 things that we would look at. But I think the assertion
16 you're trying to make is that we would just leave the
17 business alone in the face of changing dynamics and I don't,
18 you know, I'm not suggesting that's true. That's something
19 we'll work with the board on to determine kind of the
20 appropriate course forward. And, again, the numbers that,
21 you know, as presented and the projects at the time, they
22 were reasonable and we stand behind that.

23 MR. PHILLIPS: Okay, I understand you had reason
24 with this at the time presented but would you agree that as
25 your percentage of network hash rate goes down that the

1 revenue holding Bitcoin plays constant that your revenues
2 would go down?

3 MR. KOKINOS: I'm not sure I agree with that
4 because you have other variables such as price and, you
5 know, other elements that --

6 MR. PHILLIPS: I said when Bitcoin price --

7 THE COURT: Don't interrupt. Mr. Phillips,
8 don't interrupt the witness.

9 MR. PHILLIPS: Sorry.

10 THE COURT: Go ahead.

11 MR. KOKINOS: Yeah, what I was saying is, you
12 know, you're taking one variable in isolation and in a
13 complex business there are many different variables that
14 could offset and you have to look at those things
15 holistically.

16 MR. PHILLIPS: Okay, but assuming Bitcoin price is
17 constant, if your share of the network hash rate decreases,
18 would you agree that revenues decrease?

19 MR. KOKINOS: All things being equal, yes.

20 MR. PHILLIPS: Thank you. And if those revenues
21 decrease, all other elements being equal, profitability and
22 cash flow, also decrease.

23 MR. KOKINOS: What was the, could you repeat
24 that?

25 MR. PHILLIPS: I was saying that if revenues

1 decrease, and all clear things being equal, that
2 profitability and cash flow also decrease.

3 MR. KOKINOS: I mean, yes --

4 MR. PHILLIPS: Do you agree?

5 MR. KOKINOS: -- what you said makes logical
6 sense. What I'm saying is as, you know, a business person
7 and somebody's going to be running the business, we would
8 not look at things in such a static way. We would, you know,
9 look at what different elements of the business need to be
10 adjusted as market conditions change.

11 MR. PHILLIPS: But in general, if hash rate,
12 network hash rate increased, in order to be competitive and
13 produce the same amount of profits that really you would
14 incur to increase costs then.

15 MR. KOKINOS: Could you rephrase what you're
16 saying? I'm trying to follow you here.

17 MR. PHILLIPS: Would you agree then, you know, you
18 mentioned that as a business operator that you would make
19 adjustments. And that if the operating conditions were such,
20 your network hash rate was low, or your overall share of the
21 network hash rate was lower, Bitcoin price was constant,
22 let's assume that for now, that, you know, that the
23 adjustments that you would have to make in order to maintain
24 or exceed this level of profitability would then, or to
25 achieve it. I don't know how you would. But maybe you have a

1 magic dial, but you would have to increase your --

2 THE COURT: You're rambling on with the
3 question. And start the question again. Ask a quick, crisp
4 question if you wish the witness to answer.

5 MR. PHILLIPS: In order to maintain --

6 THE COURT: You're not testifying, Mr.
7 Phillips. Ask simple direct questions.

8 MR. PHILLIPS: Okay. Assuming Bitcoin price is
9 constant, and the network hash rate is higher than
10 illustrated here, in order to achieve the same level of
11 revenue then, you would have to increase your direct cost in
12 order to achieve that revenue level as one of your business
13 operation adjustments.

14 MR. KOKINOS: I agree, that's one possibility.
15 What I would say though is our focus, you know, in that, you
16 know, if you look at a market which was going in that
17 direction would be where are there efficiency improvements,
18 you know, that could be employed to better manage the
19 business. How do we drive cost out and/or, you know, are
20 there, as an example, are there certain locations that are
21 higher cost versus lower cost. You would turn of the higher
22 cost locations and run the lower more optimized ones. So I
23 hear what you're saying, I'm not sure that it follows
24 logically the profitability would decline simple as a result
25 of one of these numbers being held constant or going in a

1 different direction. And that's part of the nuance of, you
2 know, managing a Bitcoin mining business. Is you have to
3 look at all these variables together to come up with the
4 right answer and, you know, that's what we will seek to do
5 at NewCo with the board's consent.

6 MR. PHILLIPS: Okay. So knowing what you now know
7 today about the network in its current state, do you believe
8 these projections to still be accurate and conservative or -
9 -

10 THE COURT: I don't know what accurate means.
11 Projections can be reasonable, they could be not reasonable.
12 Finish up your --

13 MR. PHILLIPS: Do you --

14 THE COURT: -- finish up your question, Mr.
15 Phillips, let's go.

16 MR. PHILLIPS: Okay. Do you believe that these
17 projections are reasonable?

18 MR. KOKINOS: I, you know, previously answered
19 this.

20 THE COURT: Do you believe the projections are
21 reasonable?

22 MR. KOKINOS: Yes.

23 THE COURT: Okay. One more question, Mr.
24 Phillips.

25 MR. PHILLIPS: Okay. One moment, please, Your

1 Honor. So, as the previous question Mr. Sheik was mentioning
2 about Asher Genoot being brought onto the board when the
3 board was expanded from seven to nine. Why was Asher Genoot
4 appointed to the Fahrenheit board?

5 MR. MCCARRICK: Asked and answered.

6 THE COURT: Sustained. You've asked your
7 questions. Next person. Anybody else wish to cross examine?

8 THE CLERK: I don't see any additional hands
9 raised, Judge.

10 THE COURT: All right, any redirect?

11 MR. MCCARRICK: No, Your Honor.

12 THE COURT: All right, you're excused. Thank
13 you very much.

14 MR. KOKINOS: Thank you.

15 THE COURT: All right, we're going to take a
16 lunch break. It is 12:38. We'll resume, who's
17 [indiscernible]?

18 MR. MCCARRICK: The next witness would be Ryan
19 Kielty.

20 THE COURT: Try it again.

21 MR. MCCARRICK: Ryan Kielty of Centerview.

22 THE COURT: Okay. 2:00. Everybody can leave
23 things in the courtroom.

24 MR. MCCARRICK: Thank you, Your Honor.

25 (Whereupon the proceedings were paused at 12:38

1 for a lunch break.)

2 (Whereupon proceedings were resumed at 2:01 p.m.)

3 THE CLERK: All rise.

4 THE COURT: Please be seated. Mr. McCarrick.

5 MR. MCCARRICK: T.J. McCarrick, Kirkland and Ellis
6 on behalf of the debtors. The debtors call Ryan Kielty to
7 the stand.

8 THE COURT: You'll raise your right hand,
9 you'll be sworn in.

10 UNIDENTIFIED SPEAKER: Do you solemnly swear
11 that [indiscernible] today before the [indiscernible]?

12 MR. KIELTY I do.

13 THE COURT: All right.

14 MR. MCCARRICK: Permission to approach the witness
15 in the [indiscernible] --

16 THE COURT: Yes, please.

17 MR. MCCARRICK: -- copy of the binder.

18 THE COURT: Absolutely.

19 MR. KIELTY: Thank you.

20 THE COURT: Just for everyone's guidance, we
21 will need to break at about 4:50, 4:55, I have another, I
22 have a 5:00 here. I have another matter. So --

23 MR. MCCARRICK: May I proceed?

24 THE COURT: Please.

25 MR. MCCARRICK: Can you introduce yourself to the

1 court?

2 MR. KIELTY: Sure, my name is Ryan Kielty. I'm a
3 partner with Centerview Partners in the debt advisory and
4 structure and practice.

5 MR. MCCARRICK: What kind of firm is Centerview,
6 Mr. Kielty? What sort of work does Centerview do?

7 MR. KIELTY: Centerview is an investment banking
8 advisory firm. We provide companies and occasionally
9 creditors with advice on mergers and acquisitions, on
10 restructuring matters, on financing processes, on liability
11 management, a full range of corporate finance advisory help.

12 MR. MCCARRICK: What, if any, experience do you
13 personally have in restructuring matters?

14 MR. KIELTY: For approximately 17 years I've
15 been working in the debt advisory infrastructure industry,
16 initially with Noah Bruckfire [ph]. And then starting in
17 2011 with Centerview Partners. Both consistent roles
18 advising companies and creditors in restructuring matters.

19 MR. MCCARRICK: How did Centerview become involved
20 in these Chapter 11 cases?

21 MR. KIELTY: Centerview was retained by the
22 debtors in June of 2022 to provide advice on a full range of
23 financing, structuring alternatives. And sale alternatives.

24 MR. MCCARRICK: I'm going to talk about two areas
25 and your involvement in these cases. The first is the sales

1 process for the debtors. And the second is the valuation of
2 the debtors mining business.

3 MR. KIELTY: Okay.

4 MR. MCCARRICK: Are you familiar with the marketing
5 sales and auction process that the debtors participated in
6 for their assets?

7 MR. KIELTY: Yes, I am.

8 MR. MCCARRICK: Let's start with fall of 2022. Can
9 you describe the initial sales process?

10 MR. KIELTY: Sure, so I think just for
11 organization, I'll start with the mining sale process even
12 though the kickoff of that lagged the, what I'll call the
13 platform sale process by a few months. So we initiated a
14 mining sale process in November of 2022. We contacted over
15 70 potential acquirers. I think the exact number was 78. We
16 signed about 15 nondisclosure agreements for parties of that
17 78 that were interested in participating in the process. And
18 the sale process mandate was quite broad. At that point we
19 did not know exactly what the shape of the case, ultimate
20 plan or sale would take. And so we were open and flexible to
21 bids in all forms. Bids for individual mining assets, bids
22 for the mining business as a whole co, bids for parties that
23 wished to reorganize the mining business and leave an equity
24 stake behind for creditors. Sort of the broad structure.
25 After a month of providing diligence information, including

1 a business plan, structural information about all the
2 assets, diligence you'd expect to include in a sale process.
3 In December we received seven bids. Three of those bids were
4 for the mining business in its entirety. And then four bids
5 were for individual assets of the mining business. Of the
6 three holistic bids for mining, one of them was for \$10
7 million plus a very small earn out. One of them was for an
8 enterprise value of approximately 175 million but that
9 enterprise value was contingent upon those proceeds being
10 financed in the marketplace. The buyer was not coming to the
11 table with any cash proceeds for the assets and financing at
12 that time was very difficult and we do not believe that
13 financing could be raised to fund that purchase. And then
14 the third whole co-bid was for an enterprise value of
15 approximately \$300 million but that bid would have left the
16 creditors of the debtors with a very small equity stake
17 sitting behind a tranche of debt, large tranche of debt that
18 the buyer was proposing to put in and own which had punitive
19 terms.

20 MR. MCCARRICK: All right, you just talked about
21 the mining bids. You had also mentioned some platform bids.
22 Can you describe the platform bids that the debtors received
23 in connection with the sales process?

24 MR. KIELTY: Sure. I guess before I get there,
25 the other four bids for mining were bids for individual

1 assets, primarily bids for small selections of rigs, eight
2 to ten thousand rigs with prices in the 350 to 550 dollars
3 per rig level. For the platform bid process, we started that
4 process earlier in September of 2022. We reached out to a
5 similar number of parties for the mining business, over 70,
6 signed a similar quantum of NDA's, 15. So an aggregate
7 between the two processes there was a little bit of overlap
8 but we reached out to about 135 total bidders for the two
9 asset buckets. Similar to the mining process, we were
10 flexible on the bids that we would consider. We would
11 consider all structures. We would also consider bids that
12 included mining, bids that excluded mining, again, because
13 we weren't sure exactly what that value maximizing
14 formulation of sale would be. We did extensive diligence
15 with those bidders. Ultimately at the end of November we
16 received three bids for the non-mining assets as a whole and
17 then two bids for specific assets of non-mining, mostly
18 focused on the company's large staked ETH position, which
19 brought substantial discounts. So of the three bids that
20 were total company bids, we received a NovaWulf bid, which
21 we ultimately selected as the stalking horse. And we
22 received two other bids, one of them was from a party that
23 was seeking to take the non-mining assets of Celsius, a
24 subset of them actually not even all of them, put them onto
25 their platform, open accounts for Celsius creditors and then

1 allow Celsius creditors access to those assets with trading
2 fees and other economics for the acquirer. And that bidder
3 had had regulatory issues in other Chapter 11 cases that
4 were going on at the time so we didn't feel that bid was one
5 we could pursue. And then the second bid, other than the
6 NovaWulf bid was from a party that had a relatively small
7 platform at the time and was looking to set up individual
8 SPV's for Celsius' non-mining assets that would be
9 individually traded on that platform. And that was just,
10 that platform was not tested at the quantum of what that
11 transaction would be. It had only transacted a small
12 fraction of the total asset size of what the Celsius bid
13 would mean for that company. And also because the assets
14 would be individually traded, we thought liquidity would be
15 at issue. And so at that point the NovaWulf bid which
16 provided a comprehensive solution for the vast majority of
17 Celsius' assets, including mining, we thought was the best
18 bid and we thought it was important to have a floor for the
19 sale process going forward. And so we moved to make that
20 bid, the stalking horse. So I think the, one of the factors
21 we've learned from the mining process that sort of informed
22 our selection when it came to the platform-winning-bidder
23 was that the mining bids were very, very low for the total
24 company and/or inexecutable. And so it was, we thought it
25 was important that there be a solution for mining to

1 effectively delivery the equity of mining back to the
2 creditors because selling it at that time didn't make sense.
3 And so that was sort of further rational for why the
4 NovaWulf we viewed at the time is the best path forward.

5 MR. MCCARRICK: When you describe the NovaWulf as a
6 stalking Horse, what exactly do you mean by that?

7 MR. KIELTY: I mean that what we intended was
8 that NovaWulf there would be a floor and that it would
9 provide certainty to the estates of an exit at a time in the
10 future and that we would use that floor as a springboard to
11 further market the assets in the hopes that we could have a
12 competitive process which we ended up, which we did.

13 MR. MCCARRICK: Okay.

14 THE COURT: What was the Bitcoin price at the
15 time of the NovaWulf bid?

16 MR. KIELTY: So the Bitcoin price in November, I
17 don't remember off the top of my head, Your Honor, I
18 apologize.

19 MR. MCCARRICK: You describe the --

20 MR. KIELTY: I think I remember it being 24-ish,
21 perhaps, something like that.

22 MR. MCCARRICK: You describe the competitive
23 process that followed selection of NovaWulf as the stalking
24 horse bid, was that processed in the auction?

25 MR. KIELTY: I'm sorry, can you repeat that

1 question?

2 MR. MCCARRICK: Yeah, sure. Following the selection
3 of the NovaWulf bid you testified that there was a
4 competitive process, was that the auction process?

5 MR. KIELTY: So after the stalking horse bid was
6 selected, we made calls to parties that had declined in the
7 sale process that had let up to that point. We also got
8 inbounds from other parties like the Fahrenheit Group that
9 had not participated previously in the sale process. And so
10 we conducted diligence with those bidders and set a
11 qualified bid deadline in this spring of 2023. And we
12 collected additional bids from Fahrenheit and BRICK and one
13 other at that point. So that's the process that came after
14 the selection of the Stalking Horse. And then at that point
15 we selected Fahrenheit and BRICK and we qualified those
16 bidders and together with NovaWulf they participated in the
17 auction. The other bid that I mentioned that we received at
18 that time, there were significant financing contingencies
19 and from a diligence perspective they were months and months
20 behind the other bidders and so we didn't feel that that was
21 actionable.

22 THE COURT: Had you reached out to BRICK and
23 Fahrenheit during the initial round of assessing interest in
24 this?

25 MR. KIELTY: So Fahrenheit as an investor group

1 was not composed yet and so we did not reach out to the
2 members of Fahrenheit because I think on their own, given
3 the size of the assets we were marketing, they wouldn't have
4 been actional bidders and we didn't think to call them up at
5 that time. With BRICK we got an inbound from Global X
6 Digital in the fall around the September, October timeframe.
7 We had sent them an NDA, they didn't come back to us but
8 then they re-engaged after the stalking horse bid was put on
9 the record and so we engaged with them at that time.

10 MR. MCCARRICK: I guess, what group was ultimately
11 successful in their bid and why?

12 MR. KIELTY: So we, together with the creditors
13 committee ultimately selected Fahrenheit as the winning
14 bidder. As it's described in the disclosure statement, at
15 the outset of the auction we had selected the BRICK which
16 was a winddown bid as the highest and best. Because at that
17 time with what had happened to Bitcoin prices and the other
18 factors around the industry, the fees in the NovaWulf bid
19 were entirely too high. And at that point a winddown made
20 the most sense given that a fee structure that was contained
21 in that bid. In, I'm not sure if it was the second or third
22 round of the auction, both platform NewCo bidders,
23 Fahrenheit and NovaWulf significantly improved their fee
24 structures by hundreds of millions of dollars. And at that
25 point it became clear, given the businesses that they were

1 to create and the potential return profile there and their
2 expertise, that a NewCo bid was better than a winddown bid.
3 And so the NewCo bidders went back and forth over multiple
4 rounds, ultimately the fee structures for the NovaWulf bid
5 and Fahrenheit bid were very similar. Minor differences
6 between the two of them. And so what it really came down to
7 is the collective you between the debtors and the creditors
8 committee as to which of the management teams we were
9 selecting was going to drive the greatest value for
10 creditors, who was going to build, manage the mining
11 business most successfully, most profitably, monetize the
12 illiquid assets in a very value maximizing way and run a
13 staking business and build a staking business relatively
14 quickly. The committee members felt very strongly that the
15 Fahrenheit Group met those more qualitative factors and the
16 debtors, we supported them in that distinction. From the
17 debtors' perspective, we think it was quite close but I
18 would say on mining we really were incredibly impressed with
19 the US Bitcoin Group and we thought that that would be the
20 best choice for mining. And as it relates to the other
21 business lines, again, we thought it was close but
22 ultimately, you know, agreed with the committee.

23 MR. MCCARRICK: Okay, I want to switch gears to
24 valuation. Was Centerview asked to value the debtors' mining
25 assets?

1 MR. KIELTY: Yes, we were.

2 MR. MCCARRICK: And what sort of valuation were you
3 asked to perform?

4 MR. KIELTY: We were asked to value the
5 enterprise value of the mining business.

6 MR. MCCARRICK: And what is enterprise value
7 measure?

8 MR. KIELTY: The total value of the company and
9 all of its assets.

10 MR. MCCARRICK: What methodology or methodologies
11 did you and Centerview team use to generate that enterprise
12 value for the debtors' mining assets?

13 MR. KIELTY: So we used two methodologies to
14 value mining business. We used a discounted cash flow
15 methodology using the on lever free cash flow forecast that
16 we received from the debtors in consultation with
17 Fahrenheit. And then we also used a public company multiples
18 analysis and we used two variants of that. We measured
19 enterprise value as a multiple of the current, meaning May
20 2023 when we performed the valuation. The current hash rate
21 of the enterprise. And then we also measured enterprise
22 value based on the projected end of 2023 hash rate for the
23 enterprise. Mining companies are valued based upon a
24 multiple of their computing power and so that's why we used
25 those multiples. So we took the lows of those three data

1 points and the highs of the range of those three data
2 points, the average of those lows and highs is the 410 to
3 720 million valuation disclosure statement of which 565 is
4 the midpoint.

5 MR. MCCARRICK: All right, Mr. Kielty, can you open
6 up the binder in front of you?

7 MR. KIELTY: Sure.

8 MR. MCCARRICK: This is Celsius Exhibit 45. For the
9 record, Exhibit 45 is a copy of Mr. Kielty's declaration. Is
10 that a true and accurate copy of your declaration?

11 MR. KIELTY: Yes, it is.

12 MR. MCCARRICK: Do you adopt the statements in your
13 declaration and the analysis in the attached valuation
14 report as your, excuse me, do you adopt the statements in
15 your declaration as your testimony under oath here today?

16 MR. KIELTY: I do.

17 MR. MCCARRICK: Your Honor, we move that Celsius
18 Exhibit 45 be entered into evidence.

19 THE COURT: Any objections? All right, Celsius
20 Exhibit 45 is admitted into evidence.

21 MR. MCCARRICK: Mr. Kielty, can you now turn to
22 debtors Exhibit 8 in your binder? For the record, Exhibit 8
23 is a copy of the mining valuation analysis, attaches and
24 exhibit to the debtors disclosure statement. [indiscernible]
25 that document, sir?

1 MR. KIELTY: Yes, I am.

2 MR. MCCARRICK: Does that fairly describe the
3 mining valuation analysis that Centerview performed?

4 MR. KIELTY: It does.

5 MR. MCCARRICK: Your Honor, we would move that
6 Celsius Exhibit 8, which has not been objected to, be
7 entered into evidence.

8 THE COURT: Any obstruction? Admitted into
9 evidence.

10 MR. MCCARRICK: All right, thank you for your time,
11 Mr. Kielty. We'll pass the lens.

12 THE COURT: Thank you very much. All right,
13 cross examination. [indiscernible] Yes, Trustee?

14 MS. Cornell: No, thank you.

15 THE COURT: All right, anyone on Zoom or in the
16 courtroom, anyone else with to wish to examine Mr. Kielty?

17 MR. SHEIK: Yes, Your Honor, if I may.

18 THE COURT: Please, go ahead, Mr. Sheik.

19 MR. SHEIK: Mr. Kielty, I do have a question,
20 in regards to, now, when you guys did perform, you were one
21 of the first auditing firms that did a full review and audit
22 of the CNL and the value of the contents or the, as they
23 say, illiquid assets, or illiquid crypt in CNL, is that
24 correct?

25 MR. KIELTY: No, we're not an auditing firm and

1 didn't perform any such audit.

2 MR. SHEIK: Okay, so to your knowledge, do you
3 know what the valuation of CNL was at that time or is that
4 something that you were not privy to or do not have any
5 oversight on?

6 MR. KIELTY: I do not.

7 MR. SHEIK: Okay, never mind then. Thank you, I
8 appreciate the, those are all the questions I have.

9 THE COURT: Thank you very much, Mr. Sheik.
10 Anybody else wish to cross examine?

11 MR. PHILLIPS: Yes, Your Honor.

12 THE COURT: Mr. Phillips, go ahead.

13 MR. PHILLIPS: Hi, Mr. Kielty. Let me start with
14 the auction process which is, you just testified to and is
15 paragraph 9 of your declaration. In your experience, what's
16 the typical length of a formal bankruptcy auction?

17 MR. KIELTY: I would say that there's no typical
18 length but I would agree typical bankruptcy auctions are
19 shorter than the auction here for the debtors.

20 MR. PHILLIPS: And what would you attribute the
21 extended length of this particular auction to?

22 MR. KIELTY: Well I think there were a number of
23 factors, one, this was a very complex transaction. Both the
24 winddown transaction proposed by BRICK as well as the NewCo
25 style transactions proposed by NovaWulf and Fahrenheit, both

1 had intricate regulatory frameworks. They both had, they all
2 had business lines that are quite complicated to understand.
3 And I think more important than the complexity, regardless
4 of which of those three bidders we ultimately went with,
5 there was some degree, meaningful degree of ongoing
6 management of these assets going forward that the creditors
7 would be relying upon to generate meaningful value and
8 recovery. And so a significant part of the auction was
9 spending time with each of the bidders hearing, it had to be
10 hundreds of pages around business planning, bios, prior
11 experience and getting that familiarity with each of the
12 bidder groups so that in addition to just the economic
13 proposals around management fees the debtors and the
14 creditors committee could make a determination based on the
15 very important qualitative factors that, you know, weighed
16 heavy on the decision as to who the winning bidder would be.
17 And that took a lot of time.

18 MR. PHILLIPS: Fair enough. And getting up to the
19 end of the auction when the decision essentially was, I
20 believe, by the debtor that the two business economically
21 equivalent and you deferred to the UCC and their advisors in
22 determining which was the best bid at that time.

23 MR. MCCARRICK: Objection, Your Honor.

24 MR. PHILLIPS: And make sure the --

25 THE COURT: Sustained.

1 MR. PHILLIPS: Can I get to the end of the auction
2 and can you describe the role that Perella Weinberg
3 Partners and in particular that Mr. Aidoo in aiding the
4 committee and the debtor in selecting Fahrenheit as the
5 winning bidder.

6 MR. KIELTY: I know that Mr. Aidoo was a part of
7 the Perella team that at times was at the auction. But I,
8 you know, the creditor's committee had their own room. I'm
9 not privy to the advice or activity of Mr. Aidoo in the
10 committee's deliberations.

11 MR. PHILLIPS: Were there any other distinct
12 members of the Perella team present at the auction?

13 MR. KIELTY: Yes, Perella had a large team at
14 the auction.

15 MR. PHILLIPS: Thank you. Moving onto the
16 valuation. And you admitted, I forget the number on the
17 debtor advise, but Exhibit D, which is the valuation
18 analysis, and I submitted that as an exhibit for cross
19 examination as well.

20 MR. MCCARRICK: It's Exhibit 8. 8.

21 MR. PHILLIPS: Exhibit 8 in the debtors in the
22 [indiscernible], the first part of that.

23 MR. KIELTY: I have it in front of me, Mr.
24 Phillips.

25 MR. PHILLIPS: You did, okay. And you mentioned in

1 your testimonial the range of [indiscernible] was, I believe
2 the lows and highs of three different valuations, did you
3 see that? And market value comparable is based on both the
4 current EVA [ph] hash rate and EVA hash rate and SCN [ph] at
5 the end of 2023.

6 MR. KIELTY: That's correct.

7 MR. PHILLIPS: In your experience, is a range of
8 75 percent typically of a valuation computed?

9 MR. KIELTY: I think that every valuation is
10 unique and different to the situation. And I think that
11 range is appropriate under the circumstances.

12 MR. PHILLIPS: How many past valuations
13 approximately is a fraction of the ones that you've done in
14 your career that have a range of equal to or greater than 75
15 percent?

16 MR. KIELTY: I don't know that data point off
17 the top of my head.

18 MR. PHILLIPS: Can you list the market comparable
19 companies that were used as your comparable in the
20 valuation.

21 MR. KIELTY: I don't have it in front of me, Mr.
22 Phillips, but I know that we used eight companies in our
23 public companies analysis. There's no perfect comparable, as
24 in many situations. Within that public company set we had
25 Riot, Marathon, Hut 8, Adjusted, Proforma for the US Bitcoin

1 merger. Clean Spark, Irish Energy, Tarawolf, I'm forgetting
2 one or two off the top of my head.

3 MR. PHILLIPS: And did you use all eight data
4 points or did you elect to save the one, you know, sometimes
5 in these market comparables people disregard one because
6 they say it's too far out of the range with the others?

7 MR. KIELTY: We took the metrics for all of the
8 public companies that we chose into consideration in
9 selecting the ranges. Then ultimately informed the ultimate
10 range that's in the disclosure statement. We did not
11 disqualify any one data point. We interpreted what we saw
12 and assessed, each of those companies as relative to the
13 Celsius mining assets where they are in their lifecycle. You
14 know, what portion is hosted versus proprietary among many,
15 many other factors. And then we chose a range based on that
16 analysis.

17 MR. PHILLIPS: Were you and Centerview involved in
18 the preparation of the disclosure statement, in particular
19 the section regarding the waited distributional action?

20 MR. KIELTY: No, we were not.

21 MR. PHILLIPS: Okay, that's the end of my
22 questions.

23 THE COURT: Thank you very much, Mr. Phillips.
24 Anybody else wish to cross examine? Any redirect?

25 MR. MCCARRICK: No, Your Honor.

1 THE COURT: Anybody else? You're excused. Thank
2 you very much for your testimony.

3 MR. KIELTY: Thank you.

4 MR. MCCARRICK: T.J. McCarrick, Kirkland and Ellis
5 on behalf of the debtors. The debtors call Joel Cohen to the
6 stand.

7 THE COURT: Mr. Cohen, come on up.

8 (Whereupon the Witness was sworn in.)

9 THE COURT: Thank you very much. Mr. Cohen.

10 MR. MCCARRICK: Your Honor, permission to approach
11 the witness box.

12 THE COURT: Please.

13 MR. COHEN: Thank you.

14 MR. MCCARRICK: Good afternoon, could you introduce
15 yourself to the court?

16 MR. COHEN: Joel Cohen.

17 MR. MCCARRICK: What do you do for a living, Mr.
18 Cohen?

19 MR. COHEN: Forensic account, valuation, and
20 restructuring consulting.

21 MR. MCCARRICK: Where do you do that?

22 MR. COHEN: At Stout.

23 MR. MCCARRICK: What kind of firm is Stout?

24 MR. COHEN: Stout's a professional services
25 form that focuses in this space as well investment banking,

1 accounting advisory.

2 MR. MCCARRICK: What kind of experience do you
3 personally have in restructuring reorganization.

4 MR. COHEN: I've been doing this type of work
5 for almost 20 years. So I'm focused in sort of as an FA of
6 being a consulting expert or providing evidence.

7 MR. MCCARRICK: How did Stout become involved in
8 these Chapter 11 cases?

9 MR. COHEN: The interim management of the
10 company reached out for a consultation on valuation.

11 MR. MCCARRICK: What valuation analysis was Stout
12 asked to perform?

13 MR. COHEN: We were asked to take a select
14 listing of assets that the company held and perform a fair
15 value.

16 MR. MCCARRICK: What's a fair value analysis?

17 MR. COHEN: The receipt of a price for an asset
18 or payment of consideration for a liability at a particular
19 time.

20 MR. MCCARRICK: And what markets of the debtors'
21 assets did you perform an evaluation analysis for?

22 MR. COHEN: There were three assets classes.
23 The first was cryptocurrency or digital assets. The next was
24 loans or the lending platform. And then the final were
25 alternative assets.

1 MR. MCCARRICK: I'm going to start with the first
2 bucket. How did you value debtors' cryptocurrency assets?

3 MR. COHEN: We needed to come up with a
4 principle market. They were liquid coins that were traded
5 over a number of different block chains and so we performed
6 an analysis to obtain the best or what we felt was the
7 principle market. And then we received a price for the
8 assets and given that there wasn't a stoppage of trading at
9 this, you know, for these types of assets, we performed an
10 average. We would have a cut off at 4:00 p.m. on a
11 particular date and then average over the prior 24 hours.

12 MR. MCCARRICK: Did you make any adjustments for
13 the valuation of liquid cryptocurrency assets versus liquid
14 assets?

15 MR. COHEN: Yeah, for those that were liquid we
16 had what's typical discount for lack of marketability. The
17 inability to trade freely.

18 MR. MCCARRICK: The second bucket of assets. How
19 did Stout go about valuing the debtors institutional loans?

20 MR. COHEN: For the loans we looked to see
21 which of the loans were performing and which might not be.
22 And for the ones that were performing it was principle
23 interest plus the coupon and just performed a market
24 approach for that. And then for the nonperforming we worked
25 with management to understand what the situation was and how

1 best to put a discount rate on it.

2 MR. MCCARRICK: And the third bucket of assets, how
3 did Stout value the debtors' alternative investments?

4 MR. COHEN: Similar, we looked at the
5 agreements that were provided to us by management to
6 understand the assets and provide the right discount for
7 those assets.

8 MR. MCCARRICK: All right, could you open the
9 binder in front of you to Celsius Exhibit 51?

10 MR. COHEN: Sure.

11 MR. MCCARRICK: And for the record, that's a copy
12 of Mr. Cohen's declaration with attached exhibits which was
13 filed as docket number 3588. Is Exhibit 51 a true and
14 accurate copy of your declaration?

15 MR. COHEN: It is.

16 MR. MCCARRICK: And is the attachment a true and
17 accurate of Stout's evaluation reports?

18 MR. COHEN: It is.

19 MR. MCCARRICK: Your Honor, at this time, the
20 debtors would move Exhibit 51 into evidence.

21 THE COURT: Any objection? Green on submitted
22 into evidence.

23 MR. MCCARRICK: All right, Mr. Cohen, did you
24 prepare any visual showing the upshot of your analysis for
25 these three asset classes?

1 MR. COHEN: Yeah, for help today we had one
2 slide just to have a summary.

3 MR. MCCARRICK: All right, and if Mr. Young could
4 made a cohost so he could share what we'll mark as Debtors'
5 Demonstrative 1. Permission to approach.

6 THE COURT: Yes, please, go ahead.

7 THE CLERK: Mr. Young is a cohost.

8 MR. MCCARRICK: Mr. Cohen, can you describe what's
9 reflected in this demonstrative?

10 MR. COHEN: This is a summary or the total
11 value attributed to the three categories of assets that we
12 just described.

13 MR. MCCARRICK: And what was the total?

14 MR. COHEN: 3.2 billion.

15 MR. MCCARRICK: And was that conclusion reached to
16 a sufficient degree of certainty?

17 MR. COHEN: Yes.

18 MR. MCCARRICK: Your Honor, pass the witness.

19 THE COURT: All right, cross examination. But
20 first, does the committee have any examination
21 [indiscernible].

22 MR. MCCARRICK: No, Your Honor.

23 THE COURT: Yes, Trustee. Anyone else in the
24 courtroom. Anyone on Zoom?

25 MR. SHEIK: Yes, Your Honor.

1 THE COURT: Go ahead, Mr. Sheik.

2 MR. SHEIK: Mr. Kielty, could you, for the
3 record, state what the valuation of the CNL assets were at
th
4 the beginning of Chapter 11 which is dated 14 of July 2022.

5 MR. COHEN: This is Mr. Cohen, and we were not
6 asked to value the CEO, is that's, if I heard you correctly.

7 MR. SHEIK: No, no, was it valued at 9.8
8 billion?

9 MR. COHEN: I'm --

10 THE COURT: I don't understand your question,
11 Mr. Sheik.

12 MR. COHEN: I don't either.

13 MR. SHEIK: I was just looking to see what the
14 valuation of CNL, what assets, you know, the liquid assets
15 were at the time as you entered Chapter 11.

st

16 MR. COHEN: So our report was as of May 31 .

17 MR. SHEIK: Of '23.

18 MR. COHEN: Yeah, 2023.

19 MR. SHEIK: Got it, okay. And per the previous
20 slide, I believe, that the final conclusion was 3 point, I
21 believe, point 5 billion dollars was the amount that it was
22 valued at after adjustments, correct?

23 MR. COHEN: It was 3.2 billion for the select
24 assets that were provided to us.

25 MR. SHEIK: I apologize, that's what I saw, I

1 just got a quick glimpse of it. That's all I needed to know.

2 Thank you very much.

3 THE COURT: Thank you, Mr. Sheik. Anyone else
4 with to cross examine?

5 MR. PHILLIPS: Yes, Your Honor.

6 THE COURT: Mr. Phillips.

7 MR. PHILLIPS: Thank you, Your Honor. Let's see, I
8 submitted amended sort of exhibits and if I could ask you
9 about one of them. It's entitled disclosure statement
10 weighted distribution election example.

11 THE COURT: If you would hold on, please, Mr.
12 Phillips, I think Mr. McCarrick is going to bring that to
13 the court and to the witness, all right?

14 MR. COHEN: Thank you.

15 THE COURT: All right, Mr. Phillips.

16 MR. PHILLIPS: Do you recognize this?

17 THE COURT: You're talking about the last page,
18 the weight of distribution?

19 MR. COHEN: The --

20 MR. PHILLIPS: It says disclosure statement
21 weighted distribution example, it's a screenshot of the
22 [indiscernible] the bottom of page 24 and the top of page 55
23 from the disclosure statement.

24 MR. COHEN: I don't recognize it but I
25 understand what it is.

1 MR. PHILLIPS: Okay, do you know who prepared
2 this?

3 MR. COHEN: I don't.

4 MR. PHILLIPS: Okay. Do you believe, what is your
5 belief that a reasonable creditor who was billing on the
6 plan would infer that it would receive if they elected the
7 liquid cryptocurrency weighted distribution as compared to
8 the default election.

9 MR. PHILLIPS: Objection, Your Honor.

10 THE COURT: Sustained.

11 MR. PHILLIPS: Okay. In your fair value analysis,
12 did you estimate the overall enterprise value of the company
13 or, including the mining company or did it exclude the
14 mining company?

15 MR. COHEN: We did not perform a fair value, or
16 enterprise value for the entire company. And we did not
17 value the mining company.

18 MR. PHILLIPS: So you had the assets, other than
19 the mining company and Centerview valued the mining company
20 but nobody, to your knowledge, valued the entire enterprise?

21 MR. COHEN: I don't believe so.

22 MR. PHILLIPS: Thank you, no further questions.

23 THE COURT: Thank you, Mr. Phillips. Anyone
24 else wish to cross examine?

25 MR. KIRSANOV: Yes, Your Honor. Dimitry Kirsanov

1 with Perasonia [ph].

2 THE COURT: All right, go ahead.

3 MR. KIRSANOV: Were all digital currency assets
4 categorized based on their valuation at the time of
5 bankruptcy?

6 MR. COHEN: I'm sorry, can you repeat the
7 question?

8 MR. KIRSANOV: Certainly. Were all digital
9 currency assets categorized based on their valuation at the
10 time of bankruptcy?

11 MR. COHEN: I'm not sure if they were all
12 categorized at the time of bankruptcy.

13 MR. KIRSANOV: Does the analysis encompass the
14 cell token?

15 MR. COHEN: This analysis does not encompass
16 the cell token.

17 MR. KIRSANOV: Thank you, I have no further
18 questions.

19 THE COURT: Thank you. Anyone else wish to
20 cross examine?

21 THE CLERK: I don't see any raised hands, judge.

22 THE COURT: You're excused. Well, let me ask,
23 any redirect?

24 MR. MCCARRICK: No, Your Honor.

25 THE COURT: Anyone else? You're excused. Thank

1 you very much for your testimony.

2 MR. COHEN: Thank you.

3 MR. MCCARRICK: Your Honor, my watch has ended.

4 THE COURT: You're passing the baton.

5 MR. MCCARRICK: My, I'm passing baton to my
6 colleague Hannah Simson.

7 THE COURT: Oh, Ms. Simson, okay. Who are you
8 calling as your witness, Ms. Simson?

9 MS. SIMSON: Mr. Karpuk.

10 THE COURT: Can you say it again, I couldn't
11 hear you.

12 MS. SIMSON: Mr. Brian Karpuk, Your Honor.

13 THE COURT: Okay, thank you very much.

14 MS. SIMSON: Your Honor, Hannah Simson with
15 Kirkland and Ellis, debtors call Mr. Karpuk to the stand. I
16 also have some exhibit binder to the witness, permission to
17 approach the stand.

18 THE COURT: Please, absolutely.

19 THE CLERK: [indiscernible]

20 MR. KARPUK: I do.

21 THE COURT: Thank you, Karen. Good afternoon, Mr.
22 Karpuk.

23 MR. KARPUK: Good afternoon, Your Honor.

24 THE COURT: Ms. Simson.

25 MS. SIMSON: May I proceed, Your Honor?

1 THE COURT: Please.

2 MS. SIMSON: Can you please introduce yourself
3 to the court?

4 MR. KARPUK: My name is Brian Karpuk and I'm
5 Managing Director with Streto. Streto was retained as the
6 official claims and noticing agent and administrative
7 advisor in these cases.

8 MS. SIMSON: How long have you worked for
9 Streto?

10 MR. KARPUK: I've worked for Streto for
11 approximately four years.

12 MS. SIMSON: And how did you get involved in the
13 Celsius Chapter 11 cases?

14 MR. KARPUK: Streto was retained approximately a
15 month prior to the petition date and we have been engaged
16 with the debtors as both a claims and noticing agent and
17 administrator advisor throughout the case.

18 MS. SIMSON: I'd like to spend a couple minutes
19 on this solicitation and tabulation process. What have your
20 roles and responsibilities been in connection with the
21 Chapter 11 cases here?

22 MR. KARPUK: Strato's engaged as a claims and
23 noticing agent and then with respect to solicitation and
24 tabulation, Strato worked with the debtors legal advisors
25 and financial advisors to classify claims pursuant to the

1 courts order approving disclosure statement and solicitation
2 and voting procedures to identify parties that were entitled
3 to vote and receive solicitation packages and then to ballot
4 and send ballots or solicitation packages to all parties and
5 interest.

6 MS. SIMSON: What informed procedures you used
7 when soliciting and tabulating the votes?

8 MR. KARPUK: Strato used, in connection with our
9 discussions with the debtors' counsel we used the courts
10 order approving the disclosure statement and solicitation
11 and tabulation procedures.

12 MS. SIMSON: Do you have experience in ballot
13 restructuring?

14 MR. KARPUK: I've been in the restructuring
15 industry for approximately 20 years. For the last 15 I've
16 been a claims and noticing agent and prior to that I was an
17 attorney practicing court restructuring.

18 MS. SIMSON: I had handed you your amended
19 declaration at docket number 3574. Your Honor, debtors
20 premarked this as Exhibit 60. I will review to it as exhibit
21 60.

22 THE COURT: Okay.

23 MS. SIMSON: Is this a true and accurate copy of
th
24 the declaration that you signed on September 27 , 2023?

25 MR. KARPUK: It is.

1 MS. SIMSON: Do you adopt the declaration that
2 you submitted as exhibit 60 as your sworn testimony under
3 oath today?

4 MR. KARPUK: I do.

5 MS. SIMSON: Can you describe the process you
6 and your team followed in soliciting and tabulating the
7 votes?

8 MR. KARPUK: Once the disclosure statement was
9 filed and the disclosure statement hearing was noticed, the
10 debtors worked with the, Strato worked with the debtors
11 legal advisors and financial advisors to identify all claims
12 entitled to vote, to classify those claims into each of the
13 individual classes. Strato also worked in connection with
14 the debtors to ensure that it had the most up to date
15 contact information that the debtors had one file,
16 specifically the email address that was tied to each and
17 every account. Which would then allow that account holder to
18 log into a custom ballot portal that Strato had created. And
19 when they logged in there that party's balloting information
20 was available to them.

21 MS. SIMSON: Throughout the balloting process
22 were there any material irregularities outside the norm you
23 usually see in this process?

24 MR. KARPUK: There were not.

25 MS. SIMSON: What was the response rate for the

1 votes overall?

2 MR. KARPUK: We balloted approximately just over
3 400,000 parties and we received just under 80,000 votes. I
4 believe that's about 20 percent which is, you know, a
5 relatively high percentage response rate. And I believe
6 that, you know, over 50 percent of parties of account holder
7 claims voted during the process.

8 MS. SIMSON: And can you summarize for the court
9 how the classes voted?

10 MR. KARPUK: There were three classes which
11 voted to reject and, but beyond that all other classes
12 accepted and specifically with respect to the account holder
13 classes, many of those classes accepted in the high 90
14 percentile both by count and by dollar.

15 MS. SIMSON: And can you summarize for the
16 court how the parties and interest voted for the cell token
17 settlement?

18 MR. KARPUK: Voting for the cell token was very
19 similar to, overall to the account holder classes. I believe
20 --

21 THE COURT: Cell tokens were not in a separate
22 class.

23 MR. KARPUK: That's correct. They were --

24 THE COURT: The holders of cell tokens were in
25 multiple classes.

1 MR. KARPUK: That's correct.

2 THE COURT: And, am I correct, Strato broke
3 out, was able to break out how cell token holders voted in
4 the classes of which they voted for.

5 MR. KARPUK: That's correct, Your Honor.

6 THE COURT: Okay.

7 MS. SIMSON: And I would also like to admit
8 exhibit number 60 through declaration into evidence today.
9 Thank you for your . . .

10 THE COURT: Any objections? All right, exhibit
11 60 is admitted into evidence.

12 MS. SIMSON: Thank you very much for your time,
13 nothing further. Pass the witness.

14 THE COURT: All right, cross examination. Does
15 committee wish to examine?

16 MR. COLODNY: No, Your Honor.

17 THE COURT: Ms. Trustee, Ms. Cornell?

18 MS. CORNELL: Good afternoon. Shara Cornell on
19 behalf of the Office of the United States Trustee. I only
20 have a few questions and they have been already answered but
21 I'm just gonna ask them a little bit of a different way
22 because sometimes it can be a little confusing with the
23 voting tabulation. As part of your declaration you submitted
24 several charts, are you familiar with them?

25 MR. KARPUK: I am.

1 MS. CORNELL: The charts reference accept or
2 reject. Can you tell us how many ballots were actually sent
3 out?

4 MR. KARPUK: I guess there was just over 400,000
5 in the account holder classes plus, you know, a few hundred
6 in the other classes. So probably just over 400,000.

7 MS. CORNELL: Do you know how many of those
8 ballots that were sent out were undeliverable or not
9 received by account holders?

10 MR. KARPUK: Strato worked ahead of time,
11 because we had, we'd been doing email campaigns throughout
12 the process and we preidentified approximately 20,000
13 account holders that we expected to be undeliverable. And so
14 during, currently with the email campaign, we also mailed
15 physical solicitation packages to those 20,000. I believe
16 when we then reanalyzed that the email campaign against what
17 was expected, there were another maybe 500 parties that we
18 mailed physical solicitation packages to.

19 MS. CORNELL: Okay. Also in the tabulation
20 summaries provided, for example on page two of exhibit A,
21 you know, you used the term all ballots, all ballots total.
22 When you use that term in these charts, and again, I'm
23 referring to page two of exhibit A to your declaration.

24 MR. KARPUK: Mm-hmm.

25 MS. CORNELL: Could you just explain what you

1 mean in that context? All ballots total. Is it all ballots,
2 is it that 400,000 number that you referenced earlier?

3 THE COURT: Just orient me. I turned to that
4 page but --

5 MS. CORNELL: Oh, I'm sorry.

6 THE COURT: No, that's okay. Just tell me where
7 to look.

8 MS. CORNELL: Sure, page two of Exhibit A --

9 THE COURT: Yes.

10 MS. CORNELL: -- the declaration.

11 THE COURT: Yes. All right, I see it.

12 MS. CORNELL: Sure.

13 THE COURT: Thank you.

14 MS. CORNELL: And so my question is, you used the
15 phrase all ballots total. Does that refer to that 400,000
16 number you spoke of earlier or does that refer to the amount
17 of ballots that were actually received in response by
18 debtors?

19 MR. KARPUK: That is all ballots received in
20 response. Whether that ballot was tabulated, whether it
21 abstained or whether it was amended or late filed.

22 MS. CORNELL: And that leads me actually to my
23 next question. Can you explain for the record what abstained
24 means in this context, please?

25 MR. KARPUK: Abstained means that the voting

1 party came into the balloting portal. They may or may not
2 have made an election, but they did not vote on the plan and
3 they did click submit. The submit, they completed submission
4 of their ballot but they did not vote to accept or reject
5 the plan.

6 THE COURT: They electronically accessed the
7 portal.

8 MR. KARPUK: All the way through the process to
9 hit submit.

10 THE COURT: And they returned, but they hit
11 submit, but it was a blank ballot.

12 MR. KARPUK: Although they may have made an
13 election.

14 MS. CORNELL: And in that context, the election
15 would've gone through?

16 MR. KARPUK: Yes.

17 THE COURT: Election for what?

18 MR. KARPUK: Third-party release or opt out of the
19 class claim settlement. Any election that that particular
20 ballot was entitled to make.

21 THE COURT: Thank you.

22 MS. CORNELL: And in conclusion, just for the
23 record one more time, what percentage of accountholders
24 actually voted?

25 MR. KARPUK: I --

1 THE COURT: When you say 'actually voted' --

2 MS. CORNELL: Not including the abstention number
3 that we --

4 THE COURT: Leaving the abstentions out, how many
5 that were returned actually had votes to count.

6 MS. CORNELL: Yes, Your Honor.

7 MR. KARPUK: I'd have to add it up here. I know we
8 received about 79,500 ballots tied to, you know, unique
9 accountholders, right? So they may have voted in more than
10 one class. But if, you know, here there were -- I mean, it
11 looks like there was probably 2 to 3,000 accountholders that
12 submitted a ballot but did not vote, they abstained.

13 MS. CORNELL: Thank you. That's all I have for
14 today.

15 THE COURT: Anybody else wish to examine?

16 MR. KIRSAKOV: Hi, Dmitry Kirsakov, pro se.

17 THE COURT: Yes, please go ahead.

18 MR. KIRSAKOV: Hi, Mr. Karpuk. A few questions.
19 Was the valuation of CEL Token the sum of .25 cents for
20 building leverage throughout the ballot vote, is that
21 correct?

22 MS. SIMSON: Objection.

23 THE COURT: Sustained.

24 MR. KIRSAKOV: Who provided the directive to
25 modify the bankruptcy date valuations of the CEL Token?

1 MS. SIMSON: Objection.

2 THE COURT: Sustained.

3 MR. KIRSAKOV: I will ask the witness to open Page
4 2 to review the General Custody Claims. It appears that a
5 significant portion of the CEL custody class have rejected
6 the CEL Token settlement. Can you confirm that's accurate?

7 MR. KARPUK: By dollar amount, yes, 64 percent of
8 the CEL Token holders in Class A voted to reject. Although
9 by count, 97 percent voted to accept.

10 MR. KIRSAKOV: Can you confirm just the majority
11 of CEL Token holders did in fact reject the plan?

12 MR. KARPUK: That is not correct.

13 MR. KIRSAKOV: CEL Token holders did not reject
14 the plan?

15 MS. SIMSON: Objection.

16 THE COURT: Sustained.

17 MR. KARPUK: What percentage of CEL Token custody
18 holders rejected the plan?

19 MS. SIMSON: Objection.

20 THE COURT: Are you able to answer that question?

21 MR. KARPUK: I mean, looking -- in general, the
22 numbers for CEL Token holders mirrored overall. I think I --
23 we received approximately 36,000 ballots from CEL Token
24 holders, and they, in general, voted in the high 90 percent
25 to accept the plan.

1 MR. KIRSAKOV: So you ventured that the outcomes
2 for the CEL Tokens were comparable to other classes.
3 However, is it accurate to state the monetary majority of
4 the custody class holding CEL Tokens rejected the CEL Token
5 class?

6 MS. SIMSON: Objection.

7 THE COURT: Sustained.

8 MR. KIRSAKOV: Is it accurate to state the
9 monetary majority of voters in the custody class rejected
10 the plan?

11 MS. SIMSON: Objected.

12 THE COURT: Sustained. Mr. Kirsakov, the
13 tabulation is in evidence. When we get to the closing
14 argument, you're certainly free to argue from the exhibit.
15 But I don't understand your questions. I mean, the documents
16 say what they say.

17 MR. KIRSAKOV: Thank you, Your Honor. I have no
18 further questions.

19 THE COURT: Thank you. All right. Mr. Sabin, did
20 you want -- anybody else wish to examine?

21 MR. PHILLIPS: Yes, Your Honor, yes.

22 THE COURT: Mr. Phillips.

23 MR. PHILLIPS: Thank you, Your Honor. And I, once
24 again, I did submit an exhibit which is part of the Amended
25 Declaration, and specifically Row 7 and 8 of the Amended

1 Declaration with regards to weighted distribution election.

2 THE COURT: All right, I have that opened in front
3 of me. That's the last page of what you submitted, is that
4 correct?

5 MR. PHILLIPS: I'm sorry?

6 THE COURT: Is that the last page of what you
7 submitted? Weighted distribution election?

8 MR. PHILLIPS: Yes, yes.

9 THE COURT: Okay. Do you have it?

10 MR. KARPUK: I have the, my -- I don't have that,
11 but I do have my thing here which is the -- I think that's
12 what he's excerpting.

13 MR. COLODNY: Let me hand -- this is exactly what
14 we're showing here. I want to be sure you have the same
15 thing. Go ahead, Mr. Phillips.

16 MR. PHILLIPS: Okay. So, so in reviewing the
17 results of the weighted distribution election, is it
18 accurate to say that a total of \$112,131,300.78 in claims
19 elected more crypto?

20 MR. COLODNY: Objection, Your Honor. This is a
21 document that has totals on the bottom that apparently
22 Mr. Phillips calculated by himself. Mr. Karpuk, if you gave
23 him a calculator, might be able to do it, but there's no way
24 to tell if these totals are accurate.

25 THE COURT: Sustained.

1 MR. PHILLIPS: Would you agree that that total,
2 though, is approximate given that in Paragraph 16, you know,
3 there's 960 million plus -- in holders of Class 5, then
4 approximately, it's approximately accurate. And there's 163
5 million in, in Paragraph 15 that elected that.

6 MS. SIMSON: Objection, Your Honor.

7 MR. COLODNY: Objection, Your Honor. The document
8 speaks for itself.

9 THE COURT: Overruled.

10 MR. KARPUK: The numbers that I put forth within
11 my Certification are accurate.

12 THE COURT: Okay.

13 MR. PHILLIPS: Would -- do you have any reason to
14 doubt that if I told you that those numbers indicated that
15 6.19 times as many claims were voted in favor of more crypto
16 than more equity?

17 MS. SIMSON: Objection.

18 THE COURT: Overruled. You can -- if you're able
19 to answer that, go ahead.

20 MR. KARPUK: Sure. Without doing the math, I do
21 know that the cryptocurrency weighted election came in
22 significantly higher than the share weighted election.

23 MR. PHILLIPS: Okay, thank you. Does that enable
24 you to then -- to make any inference with regards to the 30
25 percent discount that was offered on the price of the more

1 equity election?

2 THE COURT: I'm going to sustain an objection to
3 that. The documents -- look, the vote was the vote. You could
4 interpret it the way you want to interpret it, you can argue
5 what you want to argue from it, but not with this witness.

6 MR. PHILLIPS: Your Honor, I guess I'm still
7 puzzled as to who was responsible for the weighted
8 distribution election and the Disclosure Statement given --

9 THE COURT: Mr. Phillips, your uncertainty is not
10 relevant to questioning of this witness. If you want to
11 submit a brief later on in this case, you can, but this
12 witness is testifying about the ballots that were received,
13 how they were counted, and I don't think you're asking him
14 about that. Do you have any other questions?

15 MR. PHILLIPS: I have no further questions for
16 this witness, Your Honor.

17 THE COURT: All right. Anybody else wish to
18 question the witness?

19 MR. UBIERNA: Yes, Your Honor, if I May.

20 THE COURT: Who is that?

21 MR. UBIERNA: Victor Ubierna de las Heras, Pro Se
22 Creditor.

23 THE COURT: Please, go ahead.

24 MR. UBIERNA: Was there -- okay, thank you. Was
25 there an item on the ballot to opt out of the third-party

1 releases?

2 MS. SIMSON: Objection.

3 THE COURT: Overruled. Do you know -- in ballots,
4 what opt-outs were provided?

5 MR. KARPUK: I believe that the -- each of the
6 ballots contained -- each of the ballots in the voting
7 classes contained an option to opt out of the third-party
8 release.

9 THE COURT: And could people who voted in favor of
10 the plan opt out of the releases?

11 MR. KARPUK: They could not.

12 THE COURT: Any other questions?

13 MR. UBIERNA: Do you have the -- yes, do you have
14 the number of creditors that tried to opt out of the third-
15 party releases but were not able to do so because they
16 accepted the plan?

17 MR. KARPUK: As set forth in my Certification,
18 5,160 holders attempted to opt out of those third-party
19 releases but did accept the plan.

20 MR. UBIERNA: Okay. And do you have a total amount
21 of that number of creditors?

22 MR. KARPUK: That is not a calculation that's in
23 the Certification.

24 MR. UBIERNA: Okay, thank you. I have no more
25 questions.

1 THE COURT: Thank you very much. Any additional
2 cross-examination? You're excused. Thank you very much for
3 your testimony. Well actually, is there any redirect?

4 MS. SIMSON: Nothing, Your Honor.

5 THE COURT: Deanna, is there somebody else? 'Cause
6 I don't see any hands raised in my --

7 CLERK: Yeah, Mr. Patton, his hand was raised. Now
8 it's back.

9 THE COURT: Mr. Patton, did you want to question
10 the witness?

11 MR. PATTON: Yes, Your Honor. One question,
12 please.

13 THE COURT: Okay, go ahead.

14 MR. PATTON: Sir, are you aware of any items that
15 were not settled on the ballot or any elections for any
16 creditors that had to be extended past the closure of
17 voting?

18 MR. KARPUK: That is correct. During the process,
19 we determined that parties within the convenience class were
20 unable to make the election to opt out of the class claim
21 settlement. We did open that ability for them to do that
22 during the process. Subsequent to that in connection with
23 Debtors' Counsel asked us after the voting period had
24 completed to then e-mail each of the holders in those
25 classes, and they have now until October 9th to return an e-

1 mail that says they'd like to opt out of that -- the class
2 claim settlement.

3 MR. PATTON: Thank you very kindly. I have no
4 further questions.

5 THE COURT: Thank you, Mr. Patton. Anybody else
6 wish to examine? Mr. Adler?

7 MS. DOW: Sharon Dow.

8 THE COURT: Hold on, Mr. Adler is to the podium
9 first.

10 MS. DOW: Oh, sorry.

11 MR. ADLER: Hello, I'm David Adler from McCarter &
12 English, on behalf of the ad hoc group of borrowers. I just
13 want to clarify, with respect to the Class 2 ballot, the
14 retail borrowers. There was not a box there that allowed the
15 borrowers to make an election as to whether they wished to
16 repay their loans or not, is that correct?

17 MR. KARPUK: I believe the box for -- you're
18 talking for the avoidance action settlement?

19 MR. ADLER: I'm talking about under Class 2, the
20 borrowers are given an option to repay their outstanding
21 loans.

22 MR. KARPUK: I believe there was an election for
23 them to request more information.

24 THE COURT: Mr. Adler, I think you raised this
25 issue, this was discussed earlier in the hearing. And I

1 believe that the Committee agreed to work with you to
2 provide the opportunity for people to repay their loan.

3 MR. ADLER: Your Honor, I have no further
4 questions. I just want to clarify the record because there
5 was a question asked about balloting issues.

6 THE COURT: Okay.

7 MR. COLODNY: Your Honor, I'll clarify. Within the
8 modified plan that we filed, we said we'd file -- we'd send
9 an additional notice, and we fixed this kind of confusion in
10 the --

11 THE COURT: Ms. Jones, do you want to be heard?

12 MS. JONES: Your Honor, Elizabeth Jones with
13 Kirkland & Ellis. There is a footnote in the ballot when
14 explaining Class 2 that says we will send out a notice, and
15 if you would like to elect to either repay or set off, then
16 we will follow up with that information. So it was clarified
17 on the ballot.

18 THE COURT: So that's in the process of being
19 done.

20 MS. JONES: Correct.

21 THE COURT: Okay. Thanks very much. All right.
22 Ms. Dow, you wanted to question?

23 CLERK: She's no longer raising her hand, Judge.

24 THE COURT: All right.

25 MS. DOW: Hi. Sorry, I'm in a tropical storm, so

1 things are going in and out here. I apologize. I do have one
2 question.

3 THE COURT: Go ahead.

4 MS. DOW: About, about the voting process and how
5 much -- how many votes were changed during the voting
6 process. And people were able to change their votes, we know
7 that there were disclosure statements rolling out through
8 the voting period. How many people -- how many votes were,
9 were changed?

10 MR. KARPUK: I don't have information as to how
11 many votes were changed. Although if you look at Exhibit C
12 to the -- my Certification, you can see that -- the list of
13 amended ballots. So there are 834 amended ballots in Class
14 2, 2,026 in Class 4, 5,126 in Class 5, 513 in 6 A and 64 in
15 Class 7. Those are not unique counts because there were --
16 you know, many accountholders would go through the ballot
17 process over and over, so . . .

18 MS. DOW: Thank you.

19 THE COURT: Any other questions, Ms. Dow?

20 MS. DOW: Yes, thank you. The question was of
21 those 834, were they flipping to vote for versus not for the
22 plan, or were most of the changes the other attributes in
23 the vote?

24 MR. KARPUK: I did not examine that information.

25 MS. DOW: Thank you very much.

1 THE COURT: Thank you. Anybody else wish to cross-
2 examine? You're excused.

3 MR. KARPUK: Thank you, Your Honor.

4 MS. SIMSON: I'm going to pass the time to my
5 colleague.

6 THE COURT: Thank you, Ms. Simson.

7 MS. BRIER: Good afternoon, Your Honor. Grace
8 Brier, Kirkland & Ellis on behalf of Debtors. At this time,
9 Debtors call Allison Hoeinghaus to the stand.

10 THE COURT: Thank you very much.

11 MS. BRIER: And Your Honor, may I approach with
12 the exhibits that we will use with Ms. Hoeinghaus? Thank
13 you.

14 CLERK: Please raise your right hand. Do you
15 solemnly swear and affirm that all the testimony you're
16 about to give before this Court is the truth, the whole
17 truth and nothing but the truth?

18 MS. HOEINGHAUS: Yes, I do.

19 MS. BRIER: Good afternoon. Can you please
20 introduce yourself to the Court?

21 MS. HOEINGHAUS: Hi, I'm Allison Hoeinghaus, I'm a
22 Managing Director at Alvarez & Marsal.

23 MS. BRIER: And Ms. Hoeinghaus, how did you first
24 become involved in the matters before the Court today?

25 MS. HOEINGHAUS: I was asked to be involved in

1 these cases back in January of this year to advise around
2 incentive programs for executives and other key employees of
3 the Debtors.

4 MS. BRIER: And as part of your work on this case,
5 can you describe the tasks that you performed?

6 MS. HOEINGHAUS: Sure. We were tasked with helping
7 develop the incentive program, determining what might be
8 reasonable amounts relative to other Chapter 11 cases, and
9 what's typical in the Debtors' industry.

10 MS. BRIER: And have you developed incentive
11 programs before?

12 MS. HOEINGHAUS: Yes, I have.

13 MS. BRIER: Now, were you asked to do anything
14 else in addition to developing incentive programs?

15 MS. HOEINGHAUS: At this debtor or are you talking
16 about in general?

17 MS. BRIER: Were you asked to analyze that
18 incentive program after you developed it?

19 MS. HOEINGHAUS: Yes, it was a collaborative
20 process where we were actually using the other cases and the
21 facts and other comparables to actually help develop the
22 program along the way.

23 MS. BRIER: Now, have you previously analyzed and
24 offered opinions on incentive programs in other
25 restructuring cases and in other restructuring contexts?

1 MS. HOEINGHAUS: Yes, I have. For incentive
2 programs, retention programs, severance and other
3 compensation matters.

4 MS. BRIER: Now, I'd like to turn to the document
5 that I handed you earlier. Can you tell us what that
6 document is?

7 MS. HOEINGHAUS: It's a Declaration I filed on
8 behalf of the Debtors.

9 MS. BRIER: And for the purposes of the record,
10 this is Document 3586, previously marked Exhibit 68 by
11 Debtors. Now, Ms. Hoeinghaus, can you please turn to the
12 last page of this document? Is that your signature there?

13 MS. HOEINGHAUS: Yes, it is.

14 MS. BRIER: And is this a true and accurate copy
15 of the Declaration submitted in this case?

16 MS. HOEINGHAUS: Yes, it is.

17 MS. BRIER: Your Honor, at this time, Debtors move
18 to admit Exhibit 68 into evidence.

19 THE COURT: Any objections? All right, Exhibit 68
20 is admitted into evidence.

21 (Debtors' Exhibit 68 Received into Evidence)

22 MS. BRIER: Now, Ms. Hoeinghaus, are your
23 conclusions that you reached about the EIP contained in this
24 Declaration?

25 MS. HOEINGHAUS: Yes, they are.

1 MS. BRIER: I'd like to discuss a couple of those
2 today. Do you adopt this Declaration under oath as your
3 sworn testimony?

4 MS. HOEINGHAUS: Yes, I do.

5 MS. BRIER: Now, at a high level, what is an EIP?

6 MS. HOEINGHAUS: It is an incentive program that's
7 intended to align the --

8 THE COURT: Just speak a little slower.

9 MS. HOEINGHAUS: Oh, sorry. It is an incentive
10 program that is intended to align the key executives, their
11 interests with those of the various stakeholders in this
12 case. And to really motivate them to perform certain goals
13 and objectives in this case to get to the best possible
14 outcome as part of these Chapter 11 cases.

15 MS. BRIER: And what were you asked to analyze in
16 the EIP in this case?

17 MS. HOEINGHAUS: I was specifically asked to
18 analyze how it compared to similar other distress
19 situations. Some particular other cases that have been
20 approved in Chapter 11 cases. And then also, how it compares
21 to the Debtors' market where they're competing for talent.

22 MS. BRIER: And did you summarize the results of
23 those analyses in your Declaration?

24 MS. HOEINGHAUS: Yes, I did.

25 MS. BRIER: Now, to be clear, Ms. Hoeinghaus, did

1 you analyze the performance metrics that are under the EIP?

2 MS. HOEINGHAUS: I did not. My colleague,
3 Mr. Campagna, who I believe will be testifying later, he is
4 who actually weighed in on the metrics and where those
5 performance levels were set.

6 MS. BRIER: So what specifically did you look at?

7 MS. HOEINGHAUS: I specifically looked at the
8 amounts that were being proposed, how level the number of
9 participants that were being included, and the overarching
10 structure of the program.

11 MS. BRIER: Mr. Young, if you could please pull up
12 our Exhibit 68 and turn to Page 11. I'd like to take a look
13 at one of the charts on that page. And if you could zoom in
14 on that chart, that'd be excellent. Ms. Hoeinghaus, does
15 this summarize one of the analyses that you did in this
16 matter?

17 MS. HOEINGHAUS: Yes, this analyzes the first
18 test, the distressed compensation test.

19 MS. BRIER: And in the distressed --

20 THE COURT: This is on Page 11 of her Declaration.

21 MS. BRIER: Yes. Yes, Your Honor. This is Page 11
22 of Exhibit 68, Docket Number 3586. And can you tell us what
23 this analysis is showing us?

24 MS. HOEINGHAUS: Sure. It's showing that the
25 amount being proposed here for the Debtors is very

1 reasonable relative to the peer group of Chapter 11 cases
2 that have also approved similar type incentive programs. And
3 specifically you can see here, this analysis we did here is
4 on an annualized basis. So you can see Debtors are proposing
5 just shy of 3.5 million, again, on an annualized basis,
6 which was actually at the 1 percent tile of this peer group
7 based on target cost.

8 And then we also looked at it to be assured it was
9 appropriate in terms of the number of participants. So we
10 looked at the average cost per participant, and you can see
11 here that the proposal for the Debtors is actually the
12 lowest at just over \$388,000. And similarly, as we looked at
13 it as a percent of the total assets, and it was also below
14 the tenth percentile.

15 MS. BRIER: And just to drill down a bit into what
16 you are comparing the Debtors to, can you describe what the
17 comparison is here?

18 MS. HOEINGHAUS: Sure. So my team and I prepared a
19 peer group of other Chapter 11 cases that had incentive
20 plans approved in 2017 or later. We focused on non-energy
21 companies, and then limited those that had prepetition
22 assets greater than a billion but fewer than 25 executives
23 to ensure that we were looking at ones that were focused at
24 the executive level and not rank and file incentive plans.

25 MS. BRIER: You earlier described another analysis

1 that you did, a market rate analysis. Did you summarize that
2 analysis in your Declaration?

3 MS. HOEINGHAUS: Yes, I did.

4 MS. BRIER: Mr. Young, can you please turn to Page
5 12 of the Declaration and display the first table there?

6 Ms. Hoeinghaus, can you tell us what you did in the market
7 rate comparison that you are showing in this table?

8 MS. HOEINGHAUS: Sure. So my team and I pulled
9 compensation survey data for the various EIP participants
10 and the various specific roles and responsibilities that
11 they are fulfilling to the Debtors. And we compared that to
12 these compensation surveys to provide the market level of
13 compensation. So essentially the going rate for these
14 positions at similar sized companies. And you can see here
15 at the bottom, the -- this is showing currently where the
16 executives are only working for their base salary. And with
17 only base salary, since such a large component of executive
18 compensation is around incentives, absent those incentives,
19 the base salaries are significantly below market.

20 Under P 25 there, you can see that they're 31
21 percent below the 25th percentile of the market peer group.
22 They're approximately 50 percent below the median, and
23 almost 70 percent below the market P 75.

24 MS. BRIER: Now, based on your finding that these
25 base salaries are significantly below market, what did you

1 conclude about the EIP?

2 MS. HOEINGHAUS: Concluded that an incentive
3 program was very much necessary here to ensure that market
4 levels of compensation would be offered to key executives.

5 MS. BRIER: Finally, I'd like to look at the
6 analysis you did of market rate, including the incentive
7 program. And Mr. Young, if you could pull up the last chart
8 there on Page 12, please. Ms. Hoeinghaus, can you explain to
9 us what the difference is between the chart we just looked
10 at and this one?

11 MS. HOEINGHAUS: Sure. So this now includes the
12 proposed EIP amount, to wit, the total for all of the
13 executives included here is almost \$6 million. So it's in
14 addition to the base salary that we just discovered -- or
15 just discussed. And you can see that with the inclusion of
16 the EIP, now the market levels of compensation are on
17 average between the P 25 and P 50 of market, and no
18 individual is above P 75.

19 MS. BRIER: And can you break that down for us?
20 What does that mean in kind of plain English?

21 MS. HOEINGHAUS: Sure. So it shows that now
22 including an EIP, the executives are more in line with
23 market and within a healthy range of what would be
24 considered competitive with on average being between, you
25 know, the 25th percentile of a peer group of different types

1 of companies where they're competing for talent.

2 MS. BRIER: And taking into account those results,
3 what did you conclude about the EIP overall?

4 MS. HOEINGHAUS: I concluded both on, based on the
5 distressed analysis of other Chapter 11, as well as the
6 industry market analysis here that the EIP was very
7 reasonable in terms of the amounts and the opportunities
8 that are being offered to the executives here.

9 MS. BRIER: Thank you, Ms. Hoeinghaus. I'll pass
10 the witness for cross, Your Honor.

11 THE COURT: Debtors' Committee?

12 MR. COLODNY: I have nothing.

13 THE COURT: Ms. Cornell?

14 MS. CORNELL: Good afternoon, Shara Cornell again
15 on behalf of the Office of the United States Trustee. For
16 the record, under the EIP, who makes -- strike that. Under
17 the EIP, are the awards discretionary as to when they will
18 be received?

19 MS. HOEINGHAUS: No, they're not. They're very
20 specific metrics that are outlined in the program and in the
21 Motion before the Court today, that it lays out exactly how
22 the executives can earn these. And if those metrics are not
23 satisfied, then the amounts will not be earned under the
24 program.

25 MS. CORNELL: Under the EIP, is there a discretion

1 as to -- is there any discretion as to how much each award
2 can be?

3 MS. HOEINGHAUS: No, there's set amounts by
4 individual.

5 MS. CORNELL: Under the EIP, are the awards
6 discretionary or mandatory?

7 MS. HOEINGHAUS: They are not discretionary, they
8 are -- if approved, there are set targets for each
9 individual.

10 THE COURT: If metrics are met, at measurement
11 dates, they're entitled to the amounts provided in the
12 program.

13 MS. HOEINGHAUS: Correct.

14 MS. CORNELL: Are you certain that that is the way
15 the EIP is currently set up under the revised plan and its
16 amendments?

17 MS. HOEINGHAUS: Assuming it gets approved, yes.
18 The structure is already set.

19 MS. CORNELL: Okay. Then that will be something we
20 will discuss with Debtors, because I believe there's been a
21 revision to reflect that the --

22 THE COURT: Let's not get into a discussion about
23 it, okay?

24 MS. CORNELL: Okay. So it's your testimony here
25 today that if the benchmarks are met, that the EIP awards

1 are mandatory upon the Plan Administrator to be paid out.

2 MS. HOEINGHAUS: I think maybe this might be
3 better for my colleague, Mr. Campagna, maybe, to weigh in on
4 the details on that. But that was my understanding.

5 MS. CORNELL: Okay. Thank you.

6 THE COURT: Thank you. Anyone else in the
7 courtroom? All right. On Zoom, anybody wish to cross-examine
8 who's on Zoom?

9 MR. VITHANI: Yes, Your Honor. This is Imran
10 Vithani speaking. How are you?

11 THE COURT: Okay.

12 MR. VITHANI: Ms. Allison, just a quick question
13 for you. Are you able to share the companies that you were
14 actually able to do the comparison with? Are there any
15 examples of companies that you're able to share right now?

16 MS. HOEINGHAUS: Yes. In my Declaration, I can get
17 the exact paragraph, Paragraph 15 on Page 10 of my
18 Declaration outlines the specific criteria which we did to
19 use to develop the peer group and the specific companies are
20 also listed there.

21 MR. VITHANI: Thank you, ma'am.

22 MS. HOEINGHAUS: Of course.

23 THE COURT: Just give me a second, I'm a little
24 crowded. All right, any further questions, Mr. Vithani?

25 MR. VITHANI: No, sir. Thank you so much, Judge.

1 THE COURT: All right. Anybody else on Zoom who
2 wishes to cross-examine?

3 MR. SHEIK: Yes, Your Honor. Just a quick question
4 for the -- thank you. So, for [indiscernible] I just wanted
5 to make, you know, a clarification, if you could clarify.
6 What was the post-petition valuation of CNL illiquid assets
7 as we enter Chapter 11?

8 MS. BRIER: Objection.

9 THE COURT: Sustained.

10 MR. SHEIK: My questions were really about just
11 that. So if that's sustained, then I do not --

12 THE COURT: -- for that, Mr. Sheik.

13 MR. SHEIK: Okay. I apologize for that.

14 THE COURT: It's okay. Any other cross-
15 examination?

16 MR. SHEIK: Thank you.

17 CLERK: Judge, Mr. Cruz has his hand up.

18 THE COURT: Mr. Cruz, go ahead.

19 MR. CRUZ: Yes. Cameron Cruz, Pro Se Creditor.
20 Three questions. First off, under comparators, how many, if
21 any, involved financial fraud?

22 MS. HOEINGHAUS: I don't specifically know in
23 these particular cases.

24 MR. CRUZ: Next question. In establishing your
25 baseline for Celsius, if you were to subtract out customer

1 deposits, what would the baseline become?

2 MS. BRIER: Objection.

3 THE COURT: Sustained.

4 MR. CRUZ: Finally, in the initial submission for
5 the incentive program, there was a recommendation for
6 \$239,000 for Mr. Roni Cohen-Pavon. Could you explain why
7 he's been taken out and how he initially was included?

8 THE COURT: That's pretty easy, Mr. Cruz. Can you
9 answer the question?

10 MS. HOEINGHAUS: My understanding is that if
11 anyone was thought to be having done wrong things, they were
12 going to be removed from this program.

13 THE COURT: Mr. Pavon was indicted, I believe, did
14 he plead guilty? Yes, he pled guilty.

15 MR. CRUZ: It was the act -- yes, so it was the
16 act of him being criminally charged that prompted him being
17 removed. Was there any --

18 MR. MCCARRICK: Objection.

19 THE COURT: Sustained.

20 MR. CRUZ: All right. That's it for now. Thank
21 you.

22 THE COURT: Thank you, Mr. Cruz. Anybody else wish
23 to cross-examine?

24 CLERK: I don't see any hands raised, Judge.

25 THE COURT: All right. Any redirect?

1 MS. BRIER: No, Your Honor.

2 THE COURT: All right. You're excused. Thank you
3 very much for your testimony.

4 MS. HOEINGHAUS: Thank you.

5 MS. BRIER: Your Honor, Grace Brier, Kirkland &
6 Ellis on behalf of the Debtors. That concludes the witnesses
7 we disclosed for today on the docket. We can ask the Court's
8 preference whether you'd like us to continue or wrap for
9 today and disclose new witnesses at 5:00 p.m.

10 THE COURT: Let me understand what witnesses --
11 assuming we're finished for the day, I haven't yet decided -
12 - who are the witnesses for tomorrow?

13 MS. BRIER: Yes, Your Honor. I believe the UCC has
14 two witnesses that will be called tomorrow.

15 THE COURT: Well let me ask this. Has the Debtor
16 put on its case at this point?

17 MS. BRIER: We have one more witness that our --

18 THE COURT: Mr. Campagna.

19 MS. BRIER: Mr. Campagna. And our current plan is
20 for him to follow the two UCC witnesses.

21 THE COURT: Okay.

22 MS. BRIER: We can reorder that if Your Honor
23 prefers, but we were going to start with the UCC witnesses.

24 THE COURT: All right. Mr. Colodny?

25 MR. COLODNY: Good afternoon, Your Honor. Aaron

1 Colodny from White & Case on behalf of the Official
2 Committee. We've exceeded the notice witness. We have
3 Mr. Robinson, Mr. Delco and Mr. Campagna. Mr. Robinson, I
4 believe --

5 THE COURT: Is testifying by Zoom.

6 MR. COLODNY: Is testifying by Zoom, and I believe
7 he could be available this afternoon. But we did not notice
8 him yesterday.

9 THE COURT: Right.

10 MR. COLODNY: And we would be okay calling him
11 this afternoon if it fits with Your Honor, if we're not
12 going to hang over. We can get him done between -- I think
13 he could be ready by 4:00 p.m., if we can get him on your
14 window at 4:00 p.m., that would work. Or we would prefer if
15 he's going to hang over the time, to do it --

16 THE COURT: Sure, sure. Mr. Robinson was
17 testifying about the selection of the Board members, if I'm
18 not mistaken.

19 MR. COLODNY: That's correct, Your Honor.

20 THE COURT: And who -- I know there was someone
21 who wanted to cross-examine him.

22 MR. COLODNY: Mr. Phillips, Your Honor.

23 THE COURT: Mr. Phillips. Mr. Phillips, would you
24 be prepared to cross-examine this afternoon?

25 MR. PHILLIPS: Your Honor, I would be, provided

1 that you accept the exhibits that I just filed on the docket
2 now as part of that cross-examination.

3 THE COURT: Sure. Why don't we take a break until
4 4:00. And I'll get copies of what you filed on the docket.
5 And I appreciate your willingness to cross-examine this
6 afternoon, because that was not one of the witnesses who was
7 noticed for today. Mr. Colodny --

8 MR. PHILLIPS: Should I e-mail a copy of -- I'm
9 sorry.

10 MR. COLODNY: That's fine with us, Your Honor, as
11 long as we finish, can finish Mr. Robinson.

12 THE COURT: I can't imagine that we're not going
13 to finish Mr. Robinson.

14 MR. COLODNY: Okay.

15 THE COURT: And again, I have another hearing at
16 5:00, so we'll -- I'd be very -- I've read his direct
17 examination, his written direct, and so you can put in
18 whatever background quickly you want to do for him, and then
19 we'll turn him over for cross.

20 MR. COLODNY: Sounds great.

21 THE COURT: Okay. All right, so we'll -- go ahead.

22 MR. PHILLIPS: Mr. Colodny, would you like me to
23 e-mail you those exhibits?

24 MR. COLODNY: If they're on the docket I can get
25 them from there.

1 THE COURT: It's on the docket, Mr. Phillips?

2 MR. PHILLIPS: I used the pro se uploader tool
3 which doesn't immediately publish onto the docket, unlike
4 the [indecipherable]

5 THE COURT: If you could, why don't you e-mail it
6 to Mr. Colodny. Okay?

7 MR. PHILLIPS: I'll be happy to, thank you.

8 THE COURT: All right.

9 MR. COLODNY: Thank you, Your Honor.

10 THE COURT: So we'll be in recess until 4:00.

11 MR. COLODNY: Okay.

12 (Whereupon the proceedings were paused for a
13 break.)

14 THE COURT: All right. I believe we're going to
15 begin with the testimony of Major Robinson. Is that correct?

16 MR. WEEDMAN: Correct, Your Honor. Good afternoon.
17 This is Joshua Weedman of White & Case, LLP on behalf of the
18 committee.

19 THE COURT: Okay.

20 MR. WEEDMAN: The committee calls Mark Robinson.

21 THE COURT: All right, Mr. Robinson. If you would
22 raise your right hand, you will be sworn.

23 (Whereupon the witness was sworn in.)

24 THE COURT: All right. Please have a seat.

25 MR. WEEDMAN: And, Your Honor, before we begin,

1 Mr. Robinson would just like me to note he is currently on
2 active duty, and therefore, in his fatigues. But he is only
3 appearing in his personal capacity --

4 THE COURT: I understand that.

5 MR. WEEDMAN: -- and not representing the United
6 States Army today.

7 THE COURT: Thank you.

8 MR. WEEDMAN: And Your Honor, for the witness
9 kits, I have a copy of his declaration. May I approach,
10 please?

11 THE COURT: Yes, please. And I think I indicated
12 before that I have read it already.

13 MR. WEEDMAN: And, Mr. Robinson, could you please
14 state your name for the record?

15 MR. ROBINSON: Yes. My name is Mark Robinson.

16 MR. WEEDMAN: And is it okay if I call you Mr.
17 Robinson today, or do you prefer to be called something
18 else?

19 MR. ROBINSON: Certainly, yeah. You can call me
20 Mark, Mr. Robinson, whatever works for you.

21 MR. WEEDMAN: And, Mr. Robinson, where are you
22 located right now?

23 MR. ROBINSON: I'm currently located in my office
24 at Fort Knox, Kentucky.

25 MR. WEEDMAN: And, sir, can you please confirm

1 that there is no other person in the room with you right
2 now?

3 MR. ROBINSON: I am by myself.

4 MR. WEEDMAN: And, Mr. Robinson, what's your
5 current job?

6 MR. ROBINSON: Yeah. I'm currently a Chief of
7 Military Justice at the Fort Knox Consolidated Military
8 Justice office.

9 MR. WEEDMAN: And, Mr. Robinson, are you a member
10 of the UCC in these proceedings?

11 MR. ROBINSON: I am.

12 MR. WEEDMAN: And since when have you had that
13 role?

14 MR. ROBINSON: Since July 2022.

15 MR. WEEDMAN: As part of your role in the UCC,
16 did you have any role in the board selection process for the
17 NewCo?

18 MR. ROBINSON: I did.

19 MR. WEEDMAN: All right. And, sir, could you
20 please generally describe what your role was in that board
21 selection process?

22 MR. ROBINSON: Yeah. So my role as a UCC member
23 was to review applicants, material, CVs, conducted
24 interviews. We had discussions with and without our advisors
25 to vote on and to select board members for the NewCo.

1 MR. WEEDMAN: And, sir, do you have your
2 declaration that you provided in this case in front of you?

3 MR. ROBINSON: I do.

4 MR. WEEDMAN: And is that document 3584?

5 MR. ROBINSON: Yes.

6 MR. WEEDMAN: And can you please turn to page 9
7 of that document? And are you there, sir?

8 MR. ROBINSON: Yes.

9 MR. WEEDMAN: And is that your signature on this
10 page?

11 MR. ROBINSON: Yes.

12 MR. WEEDMAN: And do you understand that this is
13 your testimony that you are providing in this confirmation
14 hearing under oath?

15 MR. ROBINSON: Yes.

16 MR. WEEDMAN: And finally, sir, do you have a
17 copy of a limited objection and reservations of rights of
18 Rick Phillips that was filed in these proceedings?

19 MR. ROBINSON: Yes, sir.

20 MR. WEEDMAN: And do you have that with you
21 today?

22 MR. ROBINSON: I do.

23 MR. WEEDMAN: Thank you, Your Honor. I pass the
24 witness.

25 THE COURT: All right. Mr. Phillips, do you wish

1 to examine?

2 MR. PHILLIPS: Yes, Your Honor, I do. Major
3 Robinson, how are you doing today? I wanted to first thank
4 you for your service on the UCC, which I know it has been a
5 volunteer job and entails many hours, as well as thank you
6 for your service to our country.

7 MR. ROBINSON: Thank you, sir.

8 MR. PHILLIPS: As I looked over your declaration,
9 in paragraph 4, you state that you, you know, your
10 participation in the UCC included participating in
11 comparative [indiscernible] due process that occurred during
12 the course of the bankruptcy, correct?

13 MR. ROBINSON: Yes.

14 MR. PHILLIPS: Were you involved, and did you
15 actually personally attend the auction that took place over
16 April and May in New York, I believe?

17 MR. ROBINSON: No, sir. I was not there in person,
18 but I had a lot of meetings about it.

19 MR. PHILLIPS: So you participated in Zooms or
20 conference calls regarding with the proceedings in real
21 time?

22 MR. ROBINSON: Yes, sir. Well, I didn't, as it was
23 going on, yes, sir, we had meetings throughout the auction
24 process.

25 MR. PHILLIPS: Thank you. Did you participate in

1 the decision to select Fahrenheit as the ultimate winner of
2 that auction?

3 MR. ROBINSON: I did.

4 MR. PHILLIPS: Okay. Can you describe who was
5 involved in that decision?

6 MR. ROBINSON: The members of the UCC were.

7 MR. PHILLIPS: Were there any advisors involved in
8 that decision?

9 MR. ROBINSON: They advised us, but we were the
10 ones who voted and made the decision. So, certainly yes, we
11 had plenty of meetings with our advisors. We discussed it
12 numerous times throughout the process. And then we had lots
13 of external meetings as well. Ultimately, the members of the
14 UCC decided to select Fahrenheit.

15 MR. PHILLIPS: Were there any particular advisors
16 who were vocal in their recommendations in that process?

17 MR. WEEDMAN: Objection, Your Honor.

18 THE COURT: Overruled.

19 MR. ROBINSON: I apologize. It was a, no, there
20 wasn't any particular, anything that stood out. There were
21 splits among the advisors and there were diverse opinions,
22 which was very helpful for us to balance and weigh our
23 options.

24 MR. PHILLIPS: Do you remember or recall if any
25 particular advisors were strongly in favor of Fahrenheit?

1 THE COURT: Let me just, before he answers that,
2 can you tell me who the advisors were? I'm particularly
3 interested whether there were any lawyers and whether you
4 received legal advice, because, in which case, there may
5 well be attorney-client privilege involved. So before you
6 get into who said what to whom, could you tell me who were
7 the advisors that you refer to, Major Robinson?

8 MR. ROBINSON: Yes, sir. The advisors we are
9 referring to are a mix of lawyers from White & Case, and
10 some advisors from Sparello [ph], but they were all, or had
11 many meetings where there were joint parties'
12 representatives.

13 THE COURT: All right. So we'll go ahead with the
14 questioning and when the questions are asked, we'll see
15 whether the committee has any attorney-client privilege
16 objections to make. Not saying that there would be a valid
17 one, but I want to be sure you don't answer before they have
18 a chance to say whatever they're going to say, OK? Go ahead.

19 MR. ROBINSON: Yes, Your Honor.

20 MR. PHILLIPS: To help on that, Your Honor, may I
21 just request that , the witness his response to any advisors
22 from the financial advisory side as opposed to the --

23 THE COURT: Well, let him answer the question, Mr.
24 Phillips. If the lawyers --

25 MR. PHILLIPS: Okay.

1 THE COURT: -- were present, it may well be that
2 attorney-client privilege applies. Attorney-client privilege
3 would not be waived because the committee had its financial
4 advisors present as well. So ask your questions. We'll see
5 whether the committee has any objections.

6 MR. PHILLIPS: Okay. I believe I asked it. So
7 basically, were there any particular advisors who were
8 strongly in favor of selecting Fahrenheit or NovaWulf at the
9 end of the auction?

10 MR. WEEDMAN: Objection, Your Honor. The question
11 calls for privileged communications between White & Case and
12 its financial advisors.

13 THE COURT: Well, it may or may not --

14 MR. WEEDMAN: It also reflects [indiscernible]

15 THE COURT: -- because if it's business advice
16 it wouldn't. If it's legal advice that was being given, it
17 may well. So, Major Robinson, can you separate out whether
18 the advice you received, whether you consider it to be legal
19 advice or discussion of the business issues?

20 MR. ROBINSON: Yes, Your Honor.

21 THE COURT: Go ahead.

22 MR. ROBINSON: Yeah. So to answer Mr. Phillips'
23 question, I don't recall any particular financial advisors
24 that were particularly strong for Fahrenheit. I know that I
25 did have conversations with lawyers present, without the

1 lawyers present, with our financial advisors. I had numerous
2 conversations with advisors in the process. But I don't
3 recall one like really pushing Fahrenheit specifically. It
4 was a very challenging and tough decision. The reason why
5 the auction took so long is both bidders were very good and
6 the process, through the bidding process, the bids changed
7 and we got better. And so, it was a, it was not a
8 necessarily easy decision. And I don't recall a particularly
9 strong push by financial advisors for Fahrenheit.

10 MR. PHILLIPS: Thank you. And you had also
11 mentioned here that you were involved in the selection of
12 the Litigation Oversight Committee.

13 MR. ROBINSON: Yes.

14 MR. PHILLIPS: In paragraph 4.

15 MR. ROBINSON: Yes.

16 MR. PHILLIPS: I believe that you were one of the
17 appointees?

18 MR. ROBINSON: Yes, sir.

19 MR. PHILLIPS: Did that, does that mean that you
20 recused yourself from the selection of the other members?

21 MR. ROBINSON: No, sir. I recused myself from the
22 selection for my selection, whether or not I would get a
23 seat on the Litigation Oversight Committee.

24 MR. PHILLIPS: And what exactly do you mean that you recused
25 yourself from your selection as opposed to the other

1 members?

2 MR. ROBINSON: Well, sir, I didn't vote on whether
3 or not I would be one of them or not. The rest of the
4 committee made a decision to put me on it. So I did not have
5 a vote in whether or not, I, I raised my hand, I volunteered
6 to be on it. I submitted my name for consideration. But I
7 did not, I did not get a vote on myself.

8 MR. PHILLIPS: All right so you didn't vote but
9 you were involved in discussions of the, of the Litigation
10 Oversight Committee members?

11 MR. ROBINSON: Yes, sir, I, and yes.

12 MR. PHILLIPS: Okay. And can you, were you
13 involved in discussions to appoint Keith Noyes?

14 MR. ROBINSON: I was.

15 MR. PHILLIPS: What was your knowledge of the
16 status of Keith Noyes at the time he was appointed to
17 Litigation Oversight Committee?

18 MR. ROBINSON: At the time that we selected him
19 for a position on the Litigation Oversight Committee, my
20 understanding is that he is a member of the UCC.

21 MR. PHILLIPS: Were you, was it your understanding
22 that he was a member of the UCC as a representative of
23 Covario?

24 MR. ROBINSON: Yes.

25 MR. PHILLIPS: Were you aware that Covario had

1 filed for insolvency?

2 MR. ROBINSON: I was.

3 MR. PHILLIPS: Were you aware that Covario had not
4 been in contact with the UCC apparently for nine months per
5 what I learned at the emergency hearing last Friday?

6 MR. WEEDMAN: Objection, Your Honor.

7 THE COURT: Sustained.

8 MR. PHILLIPS: What, what was your knowledge of
9 the relationship between Covario and Keith Noyes at the
10 time, at that time that he was appointed to Litigation
11 Oversight Committee?

12 MR. ROBINSON: My knowledge was that they're still
13 in contact with them or creditors to some extent. But I
14 don't have, I don't have any personal knowledge of, of it. I
15 don't recall any conversations that we had about it.

16 MR. PHILLIPS: When did you first become aware of
17 this issue of Covario, its insolvency, and Keith Noyes
18 eventual removal from UCC?

19 MR. ROBINSON: Well --

20 THE COURT: I ask what relevance this has, Mr.
21 Phillips, anything that we're considering?

22 MR. PHILLIPS: Well, I, I think it goes to this
23 issue of, you know, whether, you know, honestly, White &
24 Case was hiding the ball on some issues, because it seemed
25 like from the hearing on Friday that Mr. Pesce was aware of

1 these things. But I'm trying to understand whether the UCC
2 members were aware of these things when these decisions were
3 made.

4 THE COURT: I still don't understand what relevance
5 that has to the issues that you're, you want, that are
6 properly before the court.

7 MR. PHILLIPS: Well, I guess the issue that I'm
8 probing at is, you know, the UCC's independence in, in
9 actually acting on its own versus acting at the behest of
10 White & Case.

11 THE COURT: Go on with your questions for now.

12 MR. PHILLIPS: Okay. And, and were you aware of
13 the other members of the Litigation Oversight Committee; I
14 believe there are two [indiscernible], I forget the other
15 person's name, that they were former law partners of White &
16 Case when you appointed them to Litigation Oversight
17 Committee?

18 MR. WEEDMAN: Objection, Your Honor, it seems
19 that's not in the record.

20 THE COURT: Sustained.

21 MR. PHILLIPS: I thought that was in Mr. Pesce's
22 Declaration of Disinterestedness that was filed on the
23 docket.

24 THE COURT: I don't know.

25 MR. COLODNY: Mr. Pesce's Declaration 9 that is,

1 Your Honor.

2 THE COURT: I'm going to permit the question.
3 Go ahead, let's get this, let's get on with this. I'm not
4 sure what relevance this has to any of it, but go ahead.
5 What is your challenge, Mr. Phillips?

6 MR. PHILLIPS: Like I said, I, I'm trying to probe
7 this issue of whether the -

8 THE COURT: Just tell, tell me what your
9 objection is. I want to know why we're going through this
10 exercise.

11 MR. PHILLIPS: Because I want, I want the UCC
12 selections of the Litigation Oversight Committee and the
13 board to be, you know, the issue in whether it was their
14 selection or White & Case's. Because, you know, my objection
15 whether it is potential malpractice on the part of White &
16 Case.

17 THE COURT: Ask your next question.

18 MR. PHILLIPS: Thank you. So in paragraph seven,
19 you, you say the board you had an open process to identify
20 potential new board committee members. And then you had
21 approximately 45 candidates that were considered in that
22 process. Do you remember approximately or approximately what
23 fraction were, you know, from corporate open process versus
24 were recommended by White & Case, versus were recommended by
25 Perella Weinberg?

1 MR. ROBINSON: I don't recall off the top of my
2 head what fraction it was. I know we had some recommended to
3 us from our financial advisors, our legal advisors, from
4 Fahrenheit themselves. But I don't, I don't recall the
5 percentage breakdown.

6 MR. PHILLIPS: Okay, and do you remember how many
7 candidates were actually interviewed of those 45?

8 MR. ROBINSON: I want to say we interviewed 19,
9 18. That's in my declaration, I believe. What paragraph was
10 it? I believe it was 19 that we interviewed.

11 MR. PHILLIPS: Okay. And did you participate in
12 all 19 of those interviews? I realize they were all
13 recorded, but did you participate in those?

14 MR. ROBINSON: No, sir. I participated in as many
15 as I could but I was not able to make all 19.

16 MR. PHILLIPS: And approximately how many was
17 that?

18 MR. ROBINSON: I want to say nine to twelve or so.

19 MR. PHILLIPS: Okay.

20 MR. ROBINSON: And when --

21 MR. PHILLIPS: I'm sorry.

22 MR. ROBINSON: Yeah, in person, like on Zoom where
23 I was asking questions.

24 MR. PHILLIPS: In paragraph eight you mention that
25 there were there committee candidates, and we know that Mr.

1 DiFiore and Mr. Duffy were two of them. Who was the third?

2 MR. ROBINSON: I believe Keith Noyes.

3 MR. PHILLIPS: Okay. And you also say here in your
4 declaration that they recused themselves from the
5 deliberation. So does that mean they did, that they did not
6 participate in the interviews or the seconds, or that, did
7 they solely recuse themselves from the vote?

8 MR. ROBINSON: They recused themselves from the
9 discussions of, of their positions and, but they were
10 participating in the other, the other independent or other
11 board positions. But they did not vote on themselves. And we
12 kind of, so first, the way the process works, we first
13 selected how many creditors who really wanted, wanted onto
14 the board. And then they did not participate in those votes.

15 MR. PHILLIPS: Okay, well you're, you're going to
16 make me jump now to that process, which I think you, you had
17 in paragraph 14 of your declaration. And I guess before we
18 get to 14, what was the paragraph 13, which discusses the
19 increase of the size of the board from seven to nine. Why
20 did you choose to increase the size of the board from seven
21 to nine?

22 MR. ROBINSON: We chose to increase the size of
23 the board to nine based on further consideration of the
24 amount of work and that the board would be asked to do,
25 getting NewCo out of bankruptcy on its feet and then going

1 public. And just the kind of experience and skill sets of
2 what we wanted on the board, we figured, we decided it's in
3 the best interest to increase the size of the board,
4 primarily because of the workload.

5 MR. PHILLIPS: Okay. And when you did that
6 increase you realized that the ratio of UCC appointees to
7 Fahrenheit appointees decreased from 2.5 to 1 to 2 to 1?

8 MR. ROBINSON: Yes, we were very aware of that.

9 MR. PHILLIPS: So, so why in increasing the size
10 of the board and you know desiring to have more bandwidth,
11 didn't you increase it to 11 so that you could maintain that
12 ratio? And again, I mean I'm looking at it from the UCC side
13 to the one appointee from the Fahrenheit side.

14 MR. ROBINSON: Right. No, I think that the, the
15 board size of nine was appropriate. We decided it was
16 appropriate for the amount of work. We discussed the voice,
17 I mean the ratio. We felt that the board members that we
18 appointed, that they would be able to provide the necessary
19 oversight and voice for creditors and future shareholders to
20 kind of balance and oversight, provide oversight for
21 Fahrenheit. So we didn't think that it was necessary to go
22 to 11.

23 MR. PHILLIPS: And the balance, any concern?

24 MR. ROBINSON: It was definitely something we
25 considered, but it ultimately we felt like nine was the

1 right fit.

2 MR. PHILLIPS: Were you expecting Fahrenheit to
3 appoint any particular person to their third additional seat
4 in expansion to nine?

5 MR. ROBINSON: No.

6 MR. PHILLIPS: Okay. Now, now you had mentioned
7 and also it's, it's in the plan supplement. I think it's
8 exhibit E, and supplement D it might have been amended set
9 of exhibits that when you look at this new, new board
10 structure of having six UCC appointees that you determined
11 that only two should be prepetition creditors including
12 committee members. Correct?

13 MR. ROBINSON: Yes, sir.

14 MR. PHILLIPS: Okay, and I think that's in
15 paragraph 14 of your declaration.

16 MR. ROBINSON: Yes, sir.

17 MR. PHILLIPS: And then you have four that are,
18 and I have to read the wording here so hang on a second
19 while I look for it. But you had four that were, were
20 independent direct is what it was characterized as. So, so
21 help me understand this because I really don't.

22 THE COURT: Leave your editorial comments out
23 of this, please. Ask your questions.

24 MR. PHILLIPS: Okay. So, as I understand it, the
25 agreement with Fahrenheit allowed you to make four

1 unilateral selections to the NewCo Board of Directors.

2 Correct?

3 MR. ROBINSON: Yes, sir.

4 MR. PHILLIPS: And only two that were subject to
5 the mutual consent of Fahrenheit?

6 MR. ROBINSON: Yes.

7 MR. PHILLIPS: And why did you then choose to have
8 only two prepetition creditors including UCC members and
9 "four independent directors?"

10 MR. ROBINSON: Yeah, so we had a lot of discussion
11 about this. And we were trying to complete the balance
12 competing interests. We knew that it was important for
13 creditors to have a voice. And the experience that creditors
14 brought to the, to the new board would be very important for
15 applying oversight to the [indiscernible]. At the same time,
16 we wanted creditors with previous experience and on public
17 boards and we wanted to balance the necessary for outside
18 professional experience with experience with Celsius or with
19 creditor experience. And so balancing those and competing
20 interests, we decided that having two creditor, reserved
21 just for creditors, was important, so the creditors still
22 making a very important voice in NewCo going forward. And at
23 the same time with the independent creditors or independent
24 board members we selected. All of our, our interview process
25 was questioning each of them on their capabilities and

1 ability to advocate for soon-to-be shareholders, creditors,
2 that they would provide an outside oversight necessary for
3 Fahrenheit and for NewCo to be successful. We wanted to make
4 NewCo have the best chance at success, and so that's why we
5 kind of just settled on that balance.

6 MR. PHILLIPS: Did you believe that no, um,
7 creditors other than the two UCC members could fill those
8 roles?

9 MR. ROBINSON: We felt that those two were the
10 best for the two roles. Other people could, but they weren't
11 the best for it.

12 MR. PHILLIPS: Okay, but that wasn't my question.
13 My question was, were there any other creditors who were
14 qualified to fill that role on the NewCo board besides the
15 two UCC members?

16 MR. ROBINSON: Yeah, I would say we interviewed a
17 lot of really qualified candidates.

18 MR. PHILLIPS: Were they all, were there any
19 creditors --

20 MR. ROBINSON: Yeah, there were other qualified --

21 MR. PHILLIPS: Okay, and were there any creditors
22 that had more world experience that Mr. Duffy or Mr.
23 DiFiore?

24 MR. ROBINSON: I'm trying to recall candidates
25 right now. I think there may have been.

1 MR. PHILLIPS: And why weren't they selected?

2 MR. ROBINSON: Well, in the review of all the
3 materials that each applicant submitted along with their
4 interviews, resumes, certainly we had a lot of experience
5 with Tom and Scott, right. We've been on UCC for a long time
6 with them. There is a fair amount of trust. And we, the four
7 of us, we voted on it. We're cognizant of the fact that we
8 did not want to have a subconscious bias just because we had
9 worked with them. And so we had a very deliberative process
10 of speaking with advisors and discussing amongst ourselves
11 which of the creditor candidates were the best qualified.
12 And ultimately, we decided that Tom and Scott would be best
13 qualified.

14 MR. PHILLIPS: And why weren't any of those
15 creditors qualified any of the "four independent director
16 slots?"

17 MR. ROBINSON: I never said they weren't
18 qualified.

19 MR. PHILLIPS: So there were, there were some
20 creditors that would qualify for the independent director
21 slots?

22 MR. WEEDMAN: Objection, that's been answered
23 three times now.

24 THE COURT: Sustained.

25 MR. PHILLIPS: Okay.

1 THE COURT: Wrap it up --

2 MR. PHILLIPS: So again, okay. Well, I got a
3 couple of pieces of evidence or exhibits that I, I wanted to
4 ask you about regarding my own candidacy. --

5 THE COURT: Now, Mr. Phillips, this is not a
6 hearing for a disgruntled person not selected for a
7 committee. If you have any more questions, ask them. Let's
8 get it over with, because I view everything you're asking as
9 a disgruntled person who was not selected. That's not the
10 purpose of this hearing.

11 MR. PHILLIPS: Your Honor, I'm merely asking why
12 creditors --

13 THE COURT: Ask your next question, Mr.
14 Phillips, or you're over.

15 MR. PHILLIPS: Okay. So in selecting Mr. Aidoo for
16 the committee, did he have any prior board experience?

17 MR. ROBINSON: I don't recall the specifics of his
18 prior board experience.

19 MR. PHILLIPS: In selecting Mr. Aidoo for the
20 committee, you said you were aware of his tax issues. What
21 impact did you think his tax issues would have on the
22 confidence of NewCo equity investors in the future when they
23 were evaluating whether or not to purchase stock?

24 MR. WEEDMAN: Objection, Your Honor.

25 THE COURT: Sustained.

1 MR. PHILLIPS: What impact did you think Mr.
2 Aidoo's tax issues would have?

3 MR. WEEDMAN: Objection, Your Honor.

4 THE COURT: Sustained.

5 MR. PHILLIPS: Are you familiar with NASDAQ Rule
6 5605 (a) (2) regarding independent directors?

7 MR. ROBINSON: Can you, can you refresh my
8 recollection? I may have heard it in a discussion but I
9 don't want to misspeak.

10 MR. PHILLIPS: Sure. NASDAQ Rule 5605, uh, defines
11 board of directors and (a) (2) essentially deals with who is
12 an independent director. And so you said in your declaration
13 that you considered independence and diversity as part of
14 the qualifications for directors, correct?

15 MR. ROBINSON: Yes, sir.

16 MR. PHILLIPS: Okay. NASDAQ Rule 5605(a) (2) (B) says
17 a director who accepted or has a family member who has
18 accepted any --

19 THE COURT: Mr. Robinson, did you consider that
20 NASDAQ release in your deliberations, yes or no?

21 MR. ROBINSON: I believe so. Yes, Your Honor.

22 THE COURT: All right go ahead.

23 MR. PHILLIPS: Okay in paragraph 9 I believe you
24 stated that. It's and so it, in 5605(a) (2) (B) it says a
25 director who accepted or who has a family member who accepts

1 any compensation from a company in excess of \$120,000 during
2 any period of 12 consecutive months within the three years
3 preceding a determination of independence, that is involved
4 which has the three minor exceptions. Did you consider
5 whether or not Mr. Aidoo met the requirements including
6 NASDAQ Rule 5605(a)(2)(B) for being an independent director?

7 MR. WEEDMAN: I'm going to object to the question
8 to the extent he's asking about a NASDAQ regulation that's
9 not before the witness and we can't verify.

10 THE COURT: Sustained.

11 MR. PHILLIPS: Did you consider whether or not Mr.
12 Aidoo met the requirements, as we stated here the NASDAQ
13 requirements, for boards of directors including in respects
14 to independency and diversity?

15 MR. ROBINSON: Yes, sir.

16 MR. PHILLIPS: And you determined that he did?

17 MR. ROBINSON: Yes, sir.

18 MR. PHILLIPS: Do you believe that all six
19 directors selected by the UCC met the requirements of
20 independence?

21 MR. ROBINSON: Yes, sir.

22 MR. PHILLIPS: Okay. So why did you make the
23 distinguishment between prepetition creditors and
24 independence directors if all six met the requirement of
25 independence?

1 MR. ROBINSON: I'm confused. Can you, can you
2 re --

3 MR. PHILLIPS: Yeah, so, so, so your testimony is
4 that the UCC decided to have two prepetition creditors and
5 four independent creditors. And then you just said that all
6 six met the requirements of the independent creditors. So,
7 why did you split the requirement between two prepetition
8 creditors and four independent directors when all six were
9 actually independent directors?

10 MR. WEEDMAN: Objection, Your Honor, he, I think
11 he's misstating the witness's testimony.

12 THE COURT: Overruled. Are you able to answer
13 that question?

14 MR. ROBINSON: I'm sorry?

15 THE COURT: Are you able to answer that
16 question, Mr. Robinson, Major Robinson?

17 MR. ROBINSON: I, I think that I may be, so when
18 we were discussing the NASDAQ requirements, I wasn't
19 necessarily reading the, like the by-number statute of what
20 the NASDAQ required. We were advised on what the NASDAQ
21 required and whether or not we, we discussed whether or not
22 what candidate meet that, met those requirements. We
23 certainly asked questions. We relied on legal advice. And
24 the, my understanding is that, that nobody would be
25 prohibited from serving on, my, no one would be prohibited

1 on the NASDAQ requirements. I'm sorry to [indiscernible] for
2 it. So maybe I'm just misunderstanding what Mr. Phillips was
3 asking.

4 MR. PHILLIPS: I'm asking why you split between
5 the two prepetitioned and four independent and all six were
6 actually independent?

7 MR. ROBINSON: Maybe I'm misspeaking when I'm
8 saying independent because I'm not sure if I'm using the
9 word independent properly there. So I, I would say that all
10 six are, one of the, when I say independents but met
11 requirements for that. And at that point I'm [indiscernible]
12 I'm not aware of anything from the NASDAQ requirements that
13 would prohibit any of the candidates from serving.

14 MR. PHILLIPS: In paragraph 11 of your declaration
15 you talk about Mr. Aidoo's relationship with, relationship
16 with Perella Weinberg. Do you have personal knowledge of his
17 current status as an employee or not an employee for Perella
18 Weinberg?

19 MR. ROBINSON: Not personal knowledge in terms of
20 that. I haven't called his company and asked them.

21 MR. PHILLIPS: So, the statement that he'll be
22 stepping down from his executive director position at
23 Perella Weinberg is based on what?

24 MR. ROBINSON: Information I was told.

25 MR. PHILLIPS: So it's kind of hearsay?

1 MR. WEEDMAN: Objection. Form.

2 THE COURT: Sustained.

3 MR. PHILLIPS: So who told you that information?

4 MR. ROBINSON: My advisors. Our, our advisors.

5 MR. PHILLIPS: Okay.

6 MR. ROBINSON: Yes.

7 MR. PHILLIPS: And then, um, with regards to the
8 background investigation. Let me go back, back here just for
9 a second to allow me, I'll be finishing up quickly here,
10 Your Honor. Um, you, you mentioned in here that in paragraph
11 ten that the committee authorized counsel on prior
12 independent investigator to conduct comprehensive background
13 checks on certain candidates. Do you know how many
14 candidates that, that was, the background checks were
15 conducted on?

16 MR. ROBINSON: I think it was around ten.

17 MR. PHILLIPS: Okay. And then if I could direct
18 you to the amendment that, which is from the plan supplement
19 on Page 51 of 170, Docket Number ECCF 3444, the new board of
20 directors?

21 MR. WEEDMAN: Your Honor, if I may, uh, Mr.
22 Phillips had indicated he was going to circulate this
23 information and he, we didn't receive it prior to, to this
24 hearing.

25 THE COURT: I did.

1 MR. WEEDMAN: Oh, I don't think that we did, and
2 the witness doesn't have it in front of him.

3 MR. PHILLIPS: I did send it to Aaron, Aaron
4 Colodny's email prior to the, this beginning.

5 MR. COLODNY: I think I got it three minutes
6 before, Your Honor. And it's Exhibit B from Docket
7 [indiscernible]. But I am not sure if Mr. Robinson knows.

8 THE COURT: Well, there is specific language in
9 it, Mr. Phillips that you want to ask him about, just read
10 it to him slowly.

11 MR. PHILLIPS: Sure. I'm going to read you the
12 third paragraph of it. And it says to facilitate the
13 committee's final selection, the committee's legal and
14 financial advisors assembled recommended elected board
15 questionnaires, conducted interviews with perspective board
16 members along with the committee members and hired an
17 independent investigator to conduct comprehensive background
18 checks on candidates who all agreed to the investigation. So
19 I'm a little confused because this seems to me that saying
20 that there were --

21 THE COURT: I don't care whether you're
22 confused. If you have a question, ask him a question.

23 MR. PHILLIPS: Okay, so it's, were the background
24 checks conducted on all candidates who agreed to the
25 investigations or on only nine candidates?

1 MR. ROBINSON: I'm --

2 MR. COLODNY: Your Honor, objection, Your Honor.

3 THE COURT: Overruled.

4 MR. ROBINSON: I believe every candidate we did
5 the background check on agreed to it. I don't think we did
6 any that were, but I, I could be mistaken.

7 MR. PHILLIPS: Do you know the identities of what
8 candidates had background checks on, and can you, can you
9 state which ones you remember?

10 MR. ROBINSON: I don't recall all ten off the top
11 of my head. Uh, I know that everybody was selected or, had a
12 background check and I know there were several others. But I
13 can name a few if you want me to.

14 MR. PHILLIPS: Yes, please do.

15 THE COURT: I don't want you to name any of
16 them.

17 MR. PHILLIPS: All right, thank you, Your Honor.
18 I have no further questions.

19 THE COURT: Any, redirect?

20 MR. WEEDMAN: One, one question here.

21 THE COURT: Go ahead.

22 MR. WEEDMAN: So if there are any, are there any
23 other cross examiners? I need, need to --

24 THE COURT: Does anybody else wish to cross
25 examine?

1 THE CLERK: Sam-, Sami Sheik is on the line,
2 Judge.

3 THE COURT: Go ahead, Mr. Sheik.

4 MR. SHEIK: Can you hear me? Thank you, Your
5 Honor. Sir, if, would you, when it comes to Asher
6 Jenoot, were you aware that there was a SEC fine that was
7 levied on him and his organization, USBTC before his
8 addition to the board or the, you know to the board?

9 MR. WEEDMAN: Objection, assumes facts not in
10 record.

11 THE COURT: I'm sorry?

12 MR. WEEDMAN: Assumes facts in record.

13 THE COURT: Well, do you know whether that's
14 the case or not, Major Robinson? Don't, don't assume the,
15 that the question is correct, but do you have knowledge
16 about that alleged fact?

17 MR. ROBINSON: No, Your Honor.

18 THE COURT: Okay. Sustained.

19 MR. SHEIK: Okay. Thank you. And final
20 question, when, when deciding to go from seven to nine
21 individuals on this board, or this committee, rather, and in
22 assessing the value of that let's say Fahrenheit would be
23 bringing into this, you had mentioned earlier that, you
24 know, that you needed to increase that number because there
25 was that much work to be done. How did you go about

1 determining, you know, that assessing their value and, and
2 you know coming to the conclusion that you would need to
3 increase the number of positions to nine board members as
4 opposed to seven, given that there is a bunch of people will
5 be introduced into this board that will all come with a
6 heavy cost to the estate?

7 MR. WEEDMAN: Objection Your Honor.

8 THE COURT: Sustained.

9 MR. SHEIKH: And how --

10 THE COURT: One more question.

11 MR. SHEIKH: Sure, I, I'm trying to gather my
12 thoughts on this one, Your Honor. Please bear with me. How
13 is the, uh, the, okay so was there a job description or a
14 process formally rolled out to the creditors to apply for a
15 position on the board?

16 MR. ROBINSON: I'm not sure if there was like a
17 formal rollout [indiscernible] votes, something to be
18 posted. I know that we expected at least, we expected
19 applicants to come from many different [indiscernible]. And
20 we also asked and requested our advisors to compile a list.
21 So they, they were tasked with, you know, helping us solicit
22 and gather applicants from many sources, from some they
23 knew, and from outside sources.

24 MR. SHEIKH: So this was not officially rolled
25 out as a requisition, uh, as such as a normal job would, you

1 know a requisition would be rolled out. This was more, I
2 guess it was just mentioned over a town hall or through some
3 other informal means?

4 MR. WEEDMAN: Objection, Your Honor.

5 THE COURT: Sustained. All right that's your
6 questions.

7 MR. SHEIKH: Those are all the questions I had.
8 Thank you, Your Honor. I appreciate it.

9 The COURT: Thank you very much. Anybody else
10 wish to examine? All right, Mr. Weedman.

11 MR. WEEDMAN: Just one question Your Honor. Mr.
12 Robinson, were all creditors other than Mr. DeFiore[ph] and
13 Mr. Duffey considered for all spots in the NewCo board?

14 MR. ROBINSON: Yes.

15 MR. WEEDMAN: Okay, thank you Mr. Robinson. And
16 Your Honor, I realize when I was up there before I
17 authenticated and introduced the affidavit but I didn't move
18 it into evidence and so I'd like to move --

19 THE COURT: All right any objections to Major
20 Robinson's affidavit, it's declaration, it's UCC Exhibit
21 230, ECF3584? If there is no objection, it's in evidence.

22 (UCC Exhibit 230, ECF3784, received into evidence)

23 MR. WEEDMAN: Thank you, Your Honor.

24 THE COURT: All right. All right that's the end
25 of the evidence for today. Let's just talk briefly about

1 what witnesses will be called tomorrow, Mr. Colodny?

2 MR. COLODNY: Yes, Your Honor, I think we'll
3 begin tomorrow with Mr. Galpo[ph] our expert witness. And
4 then I believe that Mr. Kampanya[ph] will be the next
5 witness which will conclude the case-in-chief.

6 THE COURT: Okay.

7 MR. PHILLIPS: Your, Your Honor?

8 THE COURT: No, just a second. Go ahead, Mr.
9 Colodny.

10 MR. COLODNY: We have a, a few evidentiary issues
11 about the video clips and other things that we intend to
12 address with Your Honor tomorrow.

13 THE COURT: Okay. All right that's our day for
14 tomorrow. Let me, is there anything that's intended to fill
15 Thursday and Friday, and we'll have completed the witnesses
16 as part of Debtor and Committees case-in-chief?

17 MR. KOENIG: Your Honor, Chris Koenig, Kirkland
18 & Ellis for Celsius. We don't have any other witnesses. We
19 do have an omnibus hearing on Thursday at 10:00 a.m.

20 THE COURT: Yeah.

21 MR. KOENIG: Nothing else for this trial.

22 THE COURT: Okay. All right. All right I see
23 you all tomorrow. I would ask that, because I have another
24 hearing at, you need to move your materials off of the
25 counsel table. You can keep them, the court room is going to

1 be locked. So if you want to put them on the side you don't
2 have, anything you want to leave, you can do that. Mr.
3 Phillips, you wanted to be heard?

4 MR. PHILLIPS: Yes, Your Honor. I would just
5 request that, that I be given remote access to the
6 transcript from today's hearing --

7 THE COURT: There is no transcript to the,
8 there is no transcript from today's hearing. A transcript
9 can only be, there, there is a voice recording system. The
10 transcript needs to be ordered. There is no transcript
11 ready.

12 MR. PHILLIPS: Can I be given access to that voice
13 recording?

14 THE COURT: You, no, not tonight. If you want
15 to order the transcript, you can order the transcript. There
16 will not be a transcript tomorrow. We are adjourned for the
17 day.

18 (Whereupon the proceedings were concluded at 4:43 PM)

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C E R T I F I C A T I O N

I, Dani Rossean, certified that the foregoing
transcript is a true and accurate record of the proceedings.

A handwritten signature in black ink, appearing to read 'Dani Rossean', with a stylized flourish extending to the right.

Dani Rossean

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[500 - abstention]

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